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Salient Features of the Finance Bill, 2020 and Vivad se Vishwas Scheme

Analysis by Ved Jain

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Contents

1.	Introduction	2
2.	Tax rates	5
3.	Exemptions/Deductions	23
4.	Charitable Trusts	24
5.	Salaries	31
6.	Business	35
7.	Capital Gain	37
8.	Income from other sources	38
9.	International Tax	39
10.	Assessment	46
11.	Tax deduction and collection at source	50
12.	Penalty	58
13.	Vivad se Vishwas	59
14.	Miscellaneous	81

DIRECT TAXES

VED JAIN

INTRODUCTION

The Finance Minister presented her Second Budget on 1st February, 2020. This budget was presented in the backdrop of economic slowdown. The Indian economy which was supposed to grow at the rate of 6.8% during 2019-2020 has been projected to come down to growth rate of 5.0%. Post presentation of the budget 2019-20, the Government announced various steps to give impetus to the economy which included drastic reduction in the corporate tax rates, financial aid to affordable housing, setting up National Investment Infrastructure Fund, granting relief to MSME etc. Despite all these measures the challenge to the economy continues. The major challenge is that of unemployment.

In the year 1947, when we attained independence we were a country of 33 crore population out of which about 60% i.e. 20 crore (about 4 crore households) were dependent on agriculture, the area under agriculture was about 12 crore hectares. Now we are a country of 130 crore population out of which about 50% i.e. 65 crore (16 crore households) are dependent on agriculture, the area of which is only about 16 crore hectares. Thus, during the last 72 years, the absolute number of people dependent on agriculture have increased by more than 3 times i.e. from 20 crore to 65 crore whereas the land under agriculture has increased just by 25% i.e. from 12 crore hectares to 16 crore hectares. The average land holding per household has gone down substantially from 3 hectares per household to 1 hectare per household. Further, the contribution of the agriculture in today's GDP is about 15-16%. Almost 50% of the population is dependent and surviving on 15% GDP only.

Dependence on Agriculture		
Particulars	**1947**	**2020**
Population	33 crore	130 crore
Total land area	32.8 crore Hectare	32.8 crore Hectare
Land under agriculture	12 crore Hectare (30 crore Acre)	16 crore Hectare (40 crore Acre)
Population dependent on agriculture	20 crore (4 crore household)	65 crore (16 crore household)
Share of agriculture in GDP	50%	15-16%

There is a need to develop a growth model for the agriculture and at the same time reduce dependence on the agriculture of such high percentage of the total population. This can be achieved when we put more focus on agriculture to improve productivity and create more jobs in other sectors so as to reduce dependence on agriculture. This dependence on agriculture can be reduced by creating avenues in industry which can employ a large number of population. It is private investment which can give push to the industry and create capacity, so as to generate jobs and also the demand. Thus, for achieving higher growth, investment is the key factor. Investment will happen when there is consumption. Consumption will increase when there is enough purchasing power. Purchasing power will increase when people have money. People will have money when they have jobs. Thus, investment and job creation have to go hand-in-hand. For promoting investment, it is imperative that the environment is conducive, infrastructure is good, tax rates are competitive and there is ease of doing business. One of the most effective initiatives is the reduction in corporate tax rate. In order to achieve tax efficiency and tax rate competitive, the Government has reduced tax rate of 15% for new companies set-up on or after 1st October, 2019 for manufacturing or processing any article or thing in India. Further, tax rates were reduced for existing companies to 22% as against 30% and Minimum Alternative Tax was also abolished. The Revenue forgone consequent to the reduction in the corporate tax rate is about Rs.1,46,000/- crore. This additional money so saved by the Corporates will be available for investment. Taking into consideration of 1.3 Debt Equity Ratio, an approximate Rs.6,00,000/- crore which is equal to USD 85 bn investment should generate consequent to above measure every year. An equivalent amount of investment should flow from overseas considering the fact that the tax rates in India are the most competitive not only in South East Asia but across the world. The above measures will go a long way in generating jobs for the Indian youth. The jobs

so created will in turn create demand and demand in turn will attract investment and so on. These measures are going to give a great impetus to the manufacturing in India and job creation and will go a long way in making India a global manufacturing hub.

The Finance Minister announced various steps in this budget 2020-21 to prop-up the economy which include many amendments through Finance Bill, 2020 to Income Tax Act. The Finance Bill, 2020 has 104 clauses proposing amendments to the various provisions of the Income Tax Act. In addition thereto, the Finance Minister has announced a scheme known as `Vivad se Vishwas' and consequently introduced Direct Tax Vivad se Vishwas Bill, 2020. The proposed amendments in the Finance Bill, 2020 relating to direct taxes and the Vivad se Vishwas are analysed below. Unless otherwise stated, all the amendments are to be effective from April 1, 2021 i.e. the assessment year 2021-22 relating to the income of the financial year 2020-21 starting from 1st April, 2020.

A. TAX RATES

1. Alternative Tax Rates Slab for Individuals and HUF

The Finance Minister has proposed reduced tax rates in respect of an individual and HUF who opts to not to claim any exemption or deduction by introducing a new Section 115BAC. As per the proposal, the tax rate applicable, shall be as under, if an individual and HUF exercises an option to not to claim various exemptions or deductions provided otherwise under the Act:-

Sl. No.	Total Income	Rate of Tax
1.	Upto Rs.2,50,000	Nil
2.	From Rs.2,50,001 to Rs.5,00,000	5 per cent
3.	From Rs.5,00,001 to Rs.7,50,000	10 per cent
4.	From Rs.7,50,001 to Rs.10,00,000	15 per cent
5.	From Rs.10,00,001 to Rs.12,50,000	20 per cent
6.	From Rs.12,50,001 to Rs.15,00,000	25 per cent
7.	Above Rs.15,00,000	30 per cent

Any individual or HUF who exercises such option shall not be eligible to claim various exemptions or deductions available under the Act including the following:-

(i) Standard deduction of Rs.50,000

(ii) Leave Travel Allowance under Section 10(5)

(iii) House Rent Allowance under Section 10(13A)

(iv) Certain allowances under Section 10(14) as will be prescribed

(v) Deduction of interest up to Rs.2,00,000/- allowable under Section 24(b) in respect of self-occupied property.

(vi) Deduction of 1/3rd of family pension allowable under Section 57(iia)

(vii) All deductions allowed under Chapter VI-A (except the deduction under Section 80 CCD (2) and Section 80 JJAA) including of Rs.1,50,000/- under Section 80C in respect of contribution to provident fund, life insurance premium and deduction of Rs.50,000/- as contribution to NPS under Section 80CCD (1B).

(viii) Allowance for Minor Child Income allowable under Section 10(32) on clubbing of minor income

In addition to the above, the following deductions/exemptions allowed while computing income of business or profession shall also not be available.

(ix) Exemption for SEZ Unit under Section 10AA

(x) Additional initial depreciation in respect of plant and machinery under Section 32(1)(iia)

(xi) Investment allowance in respect of new plant and machinery in notified backward areas under Section 32AD

(xii) Tea/Coffee/Rubber development benefit under Section 33AB

(xiii) Site restoration benefit under Section 33ABA

(xiv) Various deductions for donation for expenditure on scientific research or social sciences research under section 35(1)(ii), section 35(1)(iia), section 35(1)(iiia) or under section 34(2AA)

(xv) Accelerated capital deduction for specified businesses under Section 35AD

(xvi) Expenditure on agricultural extension project under Section 35CCC

On going through the above, it is to be noted that deduction available to salaried employees such as the standard deduction of Rs. 50,000 under section 16, deduction on account of leave travel allowance under section 10(5), deduction on account of house rent allowance under section 10(13A) shall not be available in case the individual opts to pay tax at rates prescribed under section 115BAC. Moreover, it may be relevant to point out that all the deductions under Chapter VI-A other than deduction under section 80JJAA will not be eligible which means deduction of Rs.1,50,000/- in respect of long term savings like life insurance scheme contribution to PF, PPF and NPS, NSC, long term fixed deposits etc. shall also not be available. Deduction on account of donation under section 80G, deduction on account of interest on loan taken for higher education under section 80E, deduction on account of interest on saving bank account of Rs.10,000/- under Section 80TTA shall also not be available. Further, deduction in respect of income of minor child up to Rs. 1,500 under section 10(32), deduction of interest up to Rs. 2,00,000 on Home loan under section 24(b) in respect of self-occupied house, deduction under section 80EEA of interest on home loan, deduction under section section 57(iia) of 1/3rd of Family Pension are amongst other commonly availed deductions that shall also not be available under this option.

As regards the allowances under section 10(14), the benefit of deduction of which will not be available under this new section 115BAC, the Finance Bill, 2020 provides that said allowances will be prescribed. In this regard, it may be relevant to point out that the

Explanatory Memorandum provides that only the transport allowance granted to an employee to meet expenditure for the purpose of commuting between place of residence and place of duty, conveyance allowance granted to meet the expenditure on conveyance in performance of duties of an office; any allowance granted to meet the cost of travel on tour or on transfer and the daily allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty shall continue to be available to such individuals who opts to pay tax under the new section 115BAC. Any other allowance or deduction prescribed under section 10(14) read with Rule 2BB will have to be foregone in case the individual opts to pay tax under the new section 115BAC.

Further, such individual or HUF who exercises such option shall not be allowed to set off any loss or depreciation carried forward from an earlier assessment year if such loss or depreciation is attributable to any of the deductions referred hereinabove. Further, no set off of any loss under the head "Income from House Property" shall be allowed against income under any other head. Further, it has been proposed that such carried forward loss or depreciation shall be deemed to have given full effect to and no further adjustment in respect of such carried forward loss or depreciation shall be available meaning thereby that such loss or depreciation carried forward shall lapse. However, it has been provided that in case such option to pay tax under section 115BAC is exercised in respect of assessment year 2021-2022, then the written down value of the block of asset shall be increased by the amount of depreciation carried forward which is not available for set-off due to the restrictions contained in the proposed newly inserted section 115BAC. Thus, if any individual or HUF opts to pay tax under section 115BAC from AY 2021-22 itself, while any carried forward loss attributable to restricted deductions and exemptions shall lapse, the carried forward depreciation shall be added to the block of written down value of the asset in the manner to be prescribed and the benefit of such deprecation shall be available in the time to come.

It may be relevant to point out that this option is available to all the individual and HUF including non-residents. In the case of individual having no business income, this option can be exercised on year to year basis at the time of filing the return under Section 139(1). In the case of such individual or HUF which have business income, this option can be exercised before the due date of filing the return but once such option is exercised, the same shall be applicable for all the subsequent assessment years and such individual or

HUF will be required to pay tax under this section 115BAC without any deduction and shall not be entitled to withdraw from such option. Such individual or HUF having business income may however withdraw from such option only once in which case such individuals or HUFs having business income, shall not again be eligible to exercise the option to pay tax under section 115BAC. However, in case such individual or HUF having business income later on ceases to have any business income, then such individual or HUF will again be eligible to exercise this option on year to year basis at the time of filing the return. It may be relevant to point out that in the proposed sub-section (5) of section 115BAC, the restriction of one time option has been made applicable to such individual or HUF having business income and there is no reference to income from profession but considering the intent of this provision, both business and profession income may be considered and accordingly, in the case of individual or HUF having business or professional income, the option once exercises shall be retrievable.

Comparative analysis of alternate tax rate with regular tax rates

Apparently, an Individual or an HUF may save up to Rs. Rs.78,000/- in case such person is presently not availing any deductions or exemptions under the Act as can be seen from the below table:

Income	Tax liability under proposed section 115BAC	Tax liability under normal rates	Tax savings under the new option
500,000	12,500	12,500	-
750,000	37,500	62,500	26,000
1,000,000	75,000	112,500	39,000
1,250,000	125,000	187,500	65,000
1,500,000	187,500	262,500	78,000

However, considering the fact that all exemptions and deductions shall not be available, it may not be advisable to exercise such option particularly in the case of salaried taxpayers as the benefit of the exemption/deduction foregone will be far higher as compared to the reduced tax rates. The below table depicts the impact of such new provision in respect of

individuals or HUF's having different level of income who are claiming deduction of Rs. 50,000, Rs. 1,00,000, Rs. 1,50,000, Rs. 2,00,000, Rs. 2,50,000 and Rs. 3,00,000:

Total Income of the assessee before availing deductions/ exemptions	Tax liability under the tax rates specified in First Schedule to the Finance Bill, 2020 (with benefit of deductions and exemptions)		Tax liability under the proposed new section 115BAC of the Act (without benefit of deductions and exemptions)	Savings under new regime
	Taxable Income	Total Tax	Total Tax (on total income)	
A	**B = A - deduction amount**	**C = Tax on B**	**D = Tax on A**	**E = C - D**
I. Case where deduction or exemption to the tune of Rs. 50,000 is being availed.				
500,000	450,000	-	-	-
600,000	550,000	23,400	23,400	-
900,000	850,000	85,800	62,400	23,400
1,300,000	1,250,000	195,000	143,000	52,000
1,500,000	1,450,000	257,400	195,000	62,400
1,700,000	1,650,000	319,800	257,400	62,400
II. Case where deduction or exemption to the tune of Rs. 1,00,000 is being availed.				
500,000	400,000	-	-	-
600,000	500,000	-	10,400	(10,400)
650,000	550,000	23,400	28,600	(5,200)
700,000	600,000	33,800	33,800	-
900,000	800,000	75,400	62,400	13,000
1,300,000	1,200,000	179,400	143,000	36,400
1,500,000	1,400,000	241,800	195,000	46,800
1,700,000	1,600,000	304,200	257,400	46,800
III. Case where deduction or exemption to the tune of Rs. 1,50,000 is being availed.				
500,000	350,000	-	-	-
600,000	450,000	-	10,400	(10,400)

850,000	700,000	54,600	54,600	-
900,000	750,000	65,000	62,400	2,600
1,300,000	1,150,000	163,800	143,000	20,800
1,500,000	1,350,000	226,200	195,000	31,200
1,700,000	1,550,000	288,600	257,400	31,200
IV. Case where deduction or exemption to the tune of Rs. 2,00,000 is being availed.				
500,000	300,000	-	-	-
600,000	400,000	-	10,400	(10,400)
900,000	700,000	54,600	62,400	(7,800)
1,225,000	1,025,000	124,800	124,800	-
1,300,000	1,100,000	148,200	143,000	5,200
1,500,000	1,300,000	210,600	195,000	15,600
1,700,000	1,500,000	273,000	257,400	15,600
V. Case where deduction or exemption to the tune of Rs. 2,50,000 is being availed.				
500,000	250,000	-	-	-
600,000	350,000	-	10,400	(10,400)
900,000	650,000	44,200	62,400	(18,200)
1,300,000	1,050,000	132,600	143,000	(10,400)
1,500,000	1,250,000	195,000	195,000	-
1,700,000	1,450,000	257,400	257,400	-
VI. Case where deduction or exemption to the tune of Rs. 3,00,000 is being availed.				
500,000	200,000	-	-	-
600,000	300,000	-	10,400	(10,400)
900,000	600,000	33,800	62,400	(28,600)
1,300,000	1,000,000	117,000	143,000	(26,000)
1,500,000	1,200,000	179,400	195,000	(15,600)
1,700,000	1,400,000	241,800	257,400	(15,600)

On going through the above table it is to be noted that any individual or HUF whose total of deduction and exemption under various clauses is Rs.2,50,000/- or more will never benefit under this alternative option of reduced tax rates. In case of a an Individual who claims total deduction/exemption up to Rs. 2,00,000 (say Rs. 50,000 as standard deduction available under section 16 and Rs. 1,50,000 as contribution to PPF under section 80C), this alternative reduced rate of tax will be beneficial only if it income exceeds Rs. 12,25,000. In the case an individual claims deduction/exemption up to Rs. 1,50,000 (say Rs. 50,000 standard deduction under section 16 and Rs. 50,000 on account of HRA under section 10(13A) and Rs. 50,000 as contribution to PPF under section 80C), such person will be benefited under this alternative option of reduced tax rates in case his income exceeds Rs. 8,50,000. In case the total deduction being claimed is Rs. 1,00,000, the individual will benefit under this alternate reduced rate if total income exceeds Rs. 7,00,000, and in case the total deduction being claimed is Rs. 50,000, then the individual will benefit under the alternate reduced rate if his total income exceeds Rs. 6,00,000. Considering the fact that in case of individual or HUF having business income option once exercises is irretrievable, such individual or HUF before exercising the option this alternative option need not only take the income and the deductions of the year under consideration but also the income and the deductions likely to be available in future years.

The above amendment shall be effective from 1st April 2020-21 i.e. income earned from 1st April 2020-21.

Though this Section provides that in the case of individual or HUF having no business income option can be exercised at a time of filing the return. However, this will create an anomaly with the employer who is required to deduct tax at source on month to month basis. For financial year starting from April 2020, the employer will be required to deduct tax at source staring from April 2020 onwards whereas the employee will be entitled to exercise the option by July 2021 when the return for the financial year 2020-21 will become due. Thus, there is a possibility that tax so deducted by the employer may not match the tax liability arising on such employee consequent to the option exercised by such employee at a time of filing the return.

The Finance Minister in her Budget Speech has stated that this new alternative tax rates have been proposed to provide significant relief to the individual taxpayers and to simply the income tax law. She has also proposed to bring a new and simplified personal income tax regime wherein income tax rates will be significantly reduced for the individual new taxpayers who forego certain deductions and exemptions. In this regard, she has stated that her review indicates that currently more than 100 exemptions and deductions of different natures are provided in the Income Tax Act and she has removed around 70 of such exemptions and deductions under this new alternative tax rate. The remaining exemptions and deductions are proposed to be reviewed and rationalized in the coming years.

The moot question is whether removal of such exemptions and deductions and consequent lowering the tax rates will have an impact on the taxpayer. The taxpayer look forward to the ultimate tax liability and in case even after reduction of the tax rates, the ultimate tax liability consequent to the withdrawal of exemptions/deductions goes up, then the same will not be acceptable to the taxpayer. As analyzed hereinabove, it is apparent that the new alternative tax rate and consequent withdrawal of exemption and deduction may not reduce the net tax liability of a large number of taxpayers. Thus, large number of taxpayers may prefer to continue to be governed by the existing slab rates as against opting to pay tax under this new tax slabs as provided in Section 115BAC.

2. Reduced tax rate of 22 per cent for Cooperative Societies

The Finance Bill, 2020 by inserting new section 115BAD proposes to reduce the tax rate of 30 per cent applicable to a Cooperative Society to 22 per cent + 10 per cent surcharge and 4 per cent cess to make the tax rate applicable to cooperative societies at par with the rates applicable to the companies under section 115BAA of the Act. Further the applicability of alternative minimum tax rate has also been removed from the Cooperative Societies.

3. Concessional rate of 15% extended to electricity generating companies

The Finance Minister has expanded the scope of Section 115BAB introduced in September, 2019 by allowing concessional rate of 15 per cent also for new companies

incorporated on or after 1st October, 2019 and engaged in the generation of electricity. It may be relevant to point that by Taxation Laws (Amendment) Act, 2019, the corporate tax rates were reduced. In the case of companies which are incorporated on or after 1st October 2019 and engaged in the manufacturing or production of an article or thing, the corporate tax rate was reduced to 15 per cent. By this amendment, this benefit of 15 per cent tax rate shall also be available in the case of such companies which are incorporated on or after 1st October 2019 and are engaged in the generation of electricity. This amendment is being made retrospectively and accordingly shall be applicable from assessment year 2020-21.

4. Dividend income to be taxed in the hands of the Shareholders – Dividend Distribution Tax being abolished

The Finance Bill, 2020 has proposed to make a far reaching amendment to the system of taxing dividend income. At present, a company is required to pay dividend distribution tax under Section 115-O at the rate of 15 per cent (effective tax rate of 20.56%) on the amount of dividend declared/distributed or paid by such company. Further, under Section 115BBDA, a person resident in Indian other than a domestic company or a fund or institution eligible for exemption under Section 10(23C) or registered under Section 12A of the Income Tax Act is required to pay a further tax on divided income exceeding Rs.10 lakh at the rate of 10 per cent. Now, under the proposed amendment, the liability to pay dividend distribution tax under Section 115-O and on dividend income exceeding Rs.10 lakh under Section 115BBDA are being abolished. Instead, dividend received by any shareholder will be considered as its ordinary income and will be taxable at the rate applicable to such person and no exemption shall be allowed in respect of such dividend income. Accordingly, the exemption provided under Section 10(34) in respect of dividend income is being withdrawn. However, in order to avoid cascading effect of tax on a shareholder which happens to be a company, old Section 80M is being revived back. As per this Section 80M, dividend income received by a domestic company from any other domestic company to the extent such dividend income is distributed by such company on or before one month prior to the date of furnishing of return of income shall be allowed as deduction while computing its income. Accordingly, in case a company receives any dividend income during the financial year, say, 2020-21 and such dividend income to the extent it is distributed on or before 30.09.2021, such company shall be allowed to deduct

dividend distributed by it out of its dividend income received from the other domestic company. This will avoid cascading effect on dividend income in the hands of a company.

It is to be noted that as per provision of Section 80M, it is not necessary that dividend income should be received first and out of such dividend income the dividend is to be distributed to claim deduction under Section 80M. Even if the dividend is distributed first and later on dividend income is received, the dividend so distributed to the extent of dividend income received will be eligible for deduction under Section 80M.

This amendment shall be applicable in respect of the dividend declared, distributed or paid on or after 1st April 2020.

5. Impact analysis of abolition of Dividend Distribution Tax

a. Abolition of dividend distribution tax to adversely affect resident in India

The taxation of dividend income in the hands of the shareholder instead of dividend distribution tax will have mixed consequences. In the case of resident shareholder by and large it will have an adverse impact except a shareholder whose income is chargeable to tax at a rate which is lower to 20%. The implication of abolition of dividend distribution tax and taxing dividend income in the hands of the shareholder can be understood from the table on the next page.

Case	Particulars	Tax liability on dividend under the existing regime	Tax liability on dividend under the new regime	Net increase in tax liability under the new regime
	Amount to be distributed as dividend	120.56	120.56	
	DDT paid by company	20.56	-	
	Dividend received by shareholders	100.00	120.56	
Case I	Tax on dividend payable by shareholders under the slab rate of 20% plus cess of 4%	NA	25.08	
	Net income of shareholder	**100.00**	**95.48**	**4.52**
Case II	Tax on dividend payable by shareholders under the slab rate of 30% plus cess of 4%	NA	37.61	
	Net income of shareholder	**100**	**82.95**	**17.05**
Case III	Tax on dividend payable by shareholders under the slab rate of 30% plus surcharge of 10% and cess of 4%	-	41.38	-
	Net income of shareholder	**100**	**79.18**	**20.82**
Case IV	Tax on dividend payable by shareholders under the slab rate of 30% plus surcharge of 37% and cess of 4%	NA	51.53	-
	Tax liability under 115BBDA @ 10% + surcharge @ 37% + Cess @ 4%	14.25	-	-
	Net income of shareholder	**85.75**	**69.03**	**16.72**

On-going through the above table, it is to be noted that only in the case of a person having income which does not fall in the tax bracket of 20 per cent or more, the tax liability consequent to this new dividend regime will be lower. In the case of a person who falls in the tax bracket of 20 per cent, the increase in liability will be Rs. 4.52 on every Rs.100 received. In the case of a person in tax bracket of 30% and not liable to surcharge, the increase in liability will be of Rs.17.05 on every Rs 100 received as dividend. In the case of a person having income of Rs.50 lakhs and being liable to surcharge at the rate of 10%, the increase in tax liability on dividend income of Rs.100 received will be Rs.20.82. In the

case of a person having income exceeding Rs.5 crore and dividend income exceeding Rs.10 lakhs, there will be increase in tax liability of Rs.16.72 on every Rs.100 received as dividend income exceeding Rs.10 lakhs.

Thus, considering the impact of higher rate under this new regime, it will be advisable that to the extent possible, a company may declare and distribute dividend within this financial year i.e. up to 31st March 2020 so as to take advantage of lower tax liability under existing system of taxing dividend income.

b. Effective Tax Rate on companies to go up substantially under new regime of dividend taxation

It may also be relevant to analyse the effective tax rate on the company including its shareholder consequent to the proposed changes in the dividend tax regime. The same may be understood from the below table:

Particulars	Old Regime: Requirement to pay DDT	New Regime: No requirement to pay DDT
	Company whose turnover exceed Rs.400 crore in F.Y. 2017-18	
Tax rate	30%	30%
Surcharge on income exceeding Rs.10 Crore at the rate of 12%	12%	12%
Tax and Surcharge	33.60%	33.60%
Health and Education cess at the rate of 4% of tax and surcharge	1.34%	1.34%
Total tax	34.94%	34.94%
Balance income [100 -total tax]	65.06%	65.06%
Total amount available for distribution of dividend to the shareholder and for payment of Dividend Distribution Tax	65.06	65.06
Dividend Distribution Tax @ 20.56% on above dividend income (applicable under old regime)	11.09	-

Dividend distributed to the shareholder	53.97	65.06
Tax @10% plus surcharge @37% and cess @ 4% in the hands of the shareholder on dividend received exceeding Rs.10 lakhs under section 115BBDA (applicable for old regime)	7.69	
Tax @30% plus surcharge @37% and cess @ 4% in the hands of the shareholder on dividend income assuming the maximum marginal rate of tax (applicable for new regime)		27.81
Net income in the hands of the shareholder	46.28	37.25
Effective Tax Rate	53.72%	62.75%

As per the table above, a company presently liable for tax at the rate of 30 per cent and surcharge at the rate of 12 per cent + education cess at the rate of 4 per cent has to pay tax at an effective rate of 53.72 per cent assuming that shareholder is liable to pay tax on dividend income exceeding Rs.10 lakhs as well. Under the proposed regime, this tax rate will increase to 62.75 per cent. Thus, for every Rs. 100 earned by such company only Rs. 37.25 will be net income available in the hands of the shareholder under the new regime. Even in the case of a company which opts for the tax rate of 22 per cent (effective tax rate of 25.17 per cent) the net tax rate will increase from 46.77 per cent to 57.16 per cent. The net income available to a shareholder for every Rs.100 earned by the company will be Rs.42.84. This can be seen from the following table:

Particulars	Old Regime: Requirement to pay DDT	New Regime: No requirement to pay DDT
	Company who opts to pay tax at concessional rate under section 115BAA	
Tax rate	22%	22%
Surcharge on income exceeding Rs.10 Crore at the rate of 12%	10%	10%
Tax and Surcharge	24.20%	24.20%
Health and Education cess at the rate of 4% of tax and surcharge	0.97%	0.97%
Total tax	25.17%	25.17%
Balance income [100 -total tax]	74.83%	74.83%
Total amount available for distribution of dividend to the shareholder and for payment of Dividend Distribution Tax	74.83	74.83
Dividend Distribution Tax @ 20.56% on above dividend income (applicable under old regime)	12.76	-
Dividend distributed to the shareholder	62.07	74.83
Tax @10% plus surcharge @37% and cess @ 4% in the hands of the shareholder on dividend received exceeding Rs.10 lakhs under section 115BBDA (applicable for old regime)	8.84	
Tax @30% plus surcharge @37% and cess @ 4% in the hands of the shareholder on dividend income assuming the maximum marginal rate of tax (applicable for new regime)		31.99
Net Income in the hands of the shareholder	53.23	42.84
Effective Tax Rate	46.77%	57.16%

Further, a company as on date is required to spend 2% of its profit towards corporate social responsibility (CSR) in case profit is more than Rs.5 crore or more as per the provision of section 135 of Companies Act, 2013 It is also important to note that no deduction of this CSR expenditure is allowed while computing business income. Thus, the CSR obligation of 2% is like an additional tax or cess and hence the net income in the hands of the shareholder get further reduced to that extent.

c. Abolition of dividend distribution tax to benefit multi-national companies

Though the above analysis indicate that switching over from dividend distribution tax to tax dividend income in the hands of the shareholder will be disadvantageous to almost all domestic shareholders, the same will however be advantageous to the overseas investors. At present dividend is distributed by the company to its shareholder after paying the dividend distribution tax. The credit of such dividend distribution tax is not available to the overseas shareholder in their home country. Accordingly, an overseas investor in its home country does not get credit of the dividend distribution tax paid by the company. In the new dividend tax regime, the dividend received will be taxable in the hands of the shareholder with the result that such overseas shareholder will be eligible to take credit of the tax paid on its dividend income in India against the tax liability on such dividend income in its home country. Further, the tax rate on dividend income in the hands of the overseas shareholder is much lower in view of the tax rates on such dividend income prescribed in the Double Taxation Avoidance Agreement (DTAA). The tax rate on dividend income ranges from 5% to 15%. Further, with many countries, such as Switzerland and France with whom India has a Treaty, there is a Most Favored Nation (MFN) clause in such Treaties, with the result that the tax rate applicable on dividend income will be 5%. However, this concessional tax rate may not be applicable to Foreign Portfolio Investors (FPI) in view of ambiguity whether such FPIs are to be taxed as per tax treaties with the countries they are based as tax treaties can only be applied to FPIs that are ultimate beneficiaries and not just pass through vehicles registered in the country of the treaty like Mauritius, Netherlands, Singapore. This may also be an issue with the company paying dividend about the rate at which tax is to be withheld (TDS) whether as per the rate prescribed in the Finance Act or as per the treaty. It is to be further noted that in the case of a non-resident Indian, the tax rate prescribed in the Finance Bill, 2020 on investment income which will now include dividend income is 20 per cent. However, there is no such

specific tax rate prescribed on investment income in respect of other non-resident including Foreign Company. Accordingly, the dividend income will get covered in residual class where the tax rate prescribed in the Finance Bill, 2020 is 30 per cent for non-resident and 40 per cent for Foreign Company.

In view of this benefit of lower tax rate on dividend income and credit of such tax paid on dividend income in the home country being available to multi-national companies, it will be advisable for such multinational companies that dividend distribution be postponed to next year i.e. after 1st April 2020.

d. Buy back of shares apparently to be a better option than distribution of dividend

With the proposed change of taxing dividend income in the hands of shareholder where tax rate on such dividend income goes as high as upto 42.74%, it may be advisable that in the case of companies predominantly owned by the promoters, such companies should go for buy back of shares rather than distribution of dividend. As per provision of Section 46A, on purchase by the company of its own shares from the shareholder, the difference between the cost of acquisition and the value of the consideration received by the shareholder is deemed to be the capital gain arising to such shareholder. However, after insertion of section 115QA, such capital gain is exempt under Section 10(34A) in the hands of the shareholder. As per Section 115QA, a company is required to pay tax at the rate of 20 per cent on the distributed income to the shareholder on buy back of its shares. This distributed income is the difference of the amount paid by the company on buy back of shares and the amount which was received by the company for issue of such shares determined as per Rule 40BB. Thus, the tax liability on buy back of shares that is required to be paid by the company at the time of buy back of the shares will be much lower as compared to the tax on dividend income under the new regime of dividend taxation as can be seen from the following table:

Tax implications under dividend model after abolition of DDT		**Tax implications under buy back model**	
Particulars	**Amount**	**Particulars**	**Amount**
Dividend Distributed	123.30	Total amount allocated for buy back of shares	123.30
Tax on dividend income in the hands of the shareholder @ 42.74%	52.70	Tax to be paid by the company under Section 115QA of buy back of shares	23.30
Net income in the hands of shareholders	70.60	Net income in the hands of shareholder	100.00

It may be relevant to point out that under the provisions of the Companies Act, a company can buy back its paid up equity capital and the amount of the buy-back should not exceed 25 per cent of the aggregate paid up capital and free reserve of the company with a restriction of no further issue of share capital within a period of six months except by way of bonus issue. Further, no buy back can be made within a period of one year from the date of closure of the preceding offer of buy back. Considering the above provision, a company can plan to make an offer of buy back to the extent it intends to declare and pay dividend. On such income being distributed by way of buy back of shares, company will be required to pay tax at the rate of 20 per cent (effective tax rate 23.30 per cent) under section 115QA. The amount so received by the shareholder on buy back of share will be exempt under Section 10(34A) of the Act. It may also be relevant to point out that earlier, this exemption to shareholder on buy back of shares was available only in respect of buy back of shares by unlisted companies. However, the Finance (No.2) Act, 2019 w.e.f. 5th July, 2019 has extended the scope of provision of Section 115QA to buy back of shares of listed companies as well. Thus, the benefit of this concessional rate of tax under section 115QA can now be availed by both listed and unlisted companies. In the case of listed companies, where the promoters want to retain certain prescribed percentage of holding and consequent to buy back of shares, there may be a possibility of reduction in such holding, such reduction can be recouped by such promoter through purchase of share through open market post buy back of shares by the company. Further, in case consequent to such buyback of shares regularly, there is an overall reduction in the paid up capital of the company, the same can also be recouped by issue of bonus shares.

6. Dividend distribution tax also abolished in the case of mutual funds units - dividend income to be taxed in the hand of the unit holders

Dividend Distribution Tax payable by the mutual funds on distribution of dividend income on the units of mutual funds has also been abolished. Now dividend income from mutual funds will be taxable as ordinary income in the hands of the unit holders as per the applicable rate to such unit holders. Accordingly, exemption of such dividend income under Section 10(35) of the Income Tax Act is being withdrawn. This amendment shall be applicable in respect of the dividend declared or distributed on or after 1st April 2020. Considering the impact of higher rate under this new regime, it will be advisable that to the extent possible, a company may declare and distributed dividend within this financial year i.e. up to 31st March 2020. Further, the dividend income from units of mutual funds being taxable at a higher rate as analyzed hereinabove, it will be advisable to shift to the growth model rather than the dividend model. In the case of transfer of units of an equity oriented fund, the tax rate applicable in case the gain is a short term capital gain (gain arising from sale of investments of last one year) is 15 per cent without the benefit of indexation and the tax rate applicable in case the gain is a long term capital gain (gain arising from investment held for a period exceeding one year) is 10 per cent without benefit of indexation. In the case of transfer of units of a debt oriented fund, the tax rate applicable in case of a short term capital gain (gain arising from sale of investments of last three years) is the tax rate at which the individual or company is assessable to tax without the benefit of indexation and the tax rate applicable in case the gain is a long term capital gain (gain arising from investment held for a period exceeding three years) is 20 per cent with the benefit of indexation as well.

7. No change in tax rates for other tax entities

The Finance Bill, 2020 has not proposed any other change in the tax rate applicable to partnership firms, LLP and companies, both domestic as well as foreign companies. The tax rate applicable in the case of partnership firm and LLP will be 30 per cent with surcharge at the rate of 12 per cent in case the total income of such partnership firm or LLP exceeds Rs. 1 crore. The effective tax rate on partnership firm and LLP after including surcharge and educational cess comes to 34.94 per cent as against the effective tax rate of 39 per cent on individual having income exceeding Rs.2 crore and 42.74 per cent on individual having income above Rs.5.0 crore. Considering this wide gap, it may be advisable to carry on the business or the profession as partnership or LLP rather than

carrying on the business or profession as a sole proprietor. Further it may be more advisable to not to take remuneration as working partner and to have higher share of profit.

B. EXEMPTIONS/DEDUCTIONS

1. Deduction of interest on acquiring first home - extension by 1 year

Finance (No. 2) Act, 2019 inserted section 80EEA to provide deduction to individuals in respect of interest on loan taken from any financial institution, i.e. a bank or a housing finance company for the purpose of acquisition of an affordable residential house property. The deduction allowed is up to one lakh fifty thousand rupees and is subject to certain conditions. One of the conditions is that loan has been sanctioned by the financial institution during the period from 1st April, 2019 to 31st March, 2020. The Finance Bill, 2020 has proposed to extend the period of sanctioning of loan by the financial institution to 31st March, 2021. Accordingly, exemption up to Rs.1,50,000/- under this Section in respect of interest on loan taken shall be available if such loan is sanctioned up to 31st March, 2021.

2. Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign Wealth Fund

The Finance Bill, 2020 proposes to insert clause (23FE) in section 10 to provide exemption to any income in the nature of dividend, interest or long-term capital gains arising to a wholly owned subsidiary of the Abu Dhabi Investment Authority (AIDA), which is a resident of the United Arab Emirates (UAE) and which makes investment, directly or indirectly, out of the fund owned by the Government of the United Arab Emirates; or a sovereign wealth fund wholly owned and controlled by a Government of Foreign Country, is set up and regulated under laws of such foreign country and is specified by Central Government for such purpose. The exemption is available in respect of income in the nature of dividend, interest or long-term capital gain arising from an Investment made by such AIDA or Sovereign Wealth Fund in India, whether in the form of debt or equity, in a company or enterprise carrying on the business of developing, or operating or maintaining any infrastructure facility as defined in Explanation to clause (i) of sub-section (4) of section 80-IA of the Act or such other business as may be notified by the Central Government in this behalf. The exemption is available only if the investment is made on or before 31st

March, 2024 and is such investment is held for at least three years from the date of investment.

C. CHARITABLE TRUSTS

1. All existing charitable trusts/institutions to apply for re-registration

The Finance Bill, 2020 has proposed far reaching amendment in respect of all charitable trusts/institutions claiming exemption under section 10(23C) or under section 11 of the Income Tax Act. At present a charitable trust or institution is required to obtain registration under section 12A at the time of its inception and once such registration is granted, the same is valid till such time it is withdrawn or cancelled under section 12AA(3) or section 12AA(4) of the Act. It has now been proposed in the Finance Bill, 2020 that the provision of section 12AA shall not be applicable on or after 1st June, 2020. Further, a new clause (ac) has been inserted in section 12A w.e.f. 1st June, 2020 providing that where the trust or institution is registered under Section 12A or under Section 12AA, it shall be required to make an application in the prescribed form to the Principal Commissioner or Commissioner for registration of trust within three months from 1st June 2020 and such trust or institution should obtain registration under section 12AB. Thus, all existing trusts or institutions which are registered under Section 12A or Section 12AA will mandatorily be required for re-registration within a period of three months starting from 1st June, 2020 i.e. upto 31st August, 2020 and obtain registration under Section 12AB. However, it has been provided under section 12AB that in such cases where the trust/institution is already registered under section 12A or section 12AA and such application is made as is required under the above clause, registration shall be granted by the Principal Commissioner or the Commissioner by passing an order within a period of three months from the end of the month in which the application was received and such registration shall be valid for a period of 5 years. This amendment will require every trust or institution which are already registered to apply again and in case such application is not made, then, by implication, the registration shall stand cancelled on the expiry of three months i.e. 31st August, 2020, with the result that such trust or institution shall not be eligible for claiming exemption in respect of its income under section 11 of the Act. Further, as per section 115TD of the Act, such trust or institution shall be required to pay tax on the aggregate fair market value of the total assets of the trust or the institution as on 31st August, 2020 which exceeds the total liability of such trust on that date. The tax payable on such value shall be at the

maximum marginal rate. This provision can have a far reaching implication on many of the trusts or institutions which though may not be having much income but may be having assets by way of properties etc. which are rented out at a very old nominal rate in case such trust or institution fails to apply again and obtain registration under this new section 12AB of the Act.

It is to be noted that there is no threshold exemption and all trusts or institutions registered will have to mandatorily apply for re-registration. There may be many trusts or institutions which may not be functional or defunct or having some disputes and despite there being no income during the year, such trusts or institutions will still become liable to pay tax on the fair market value of the assets exceeding the liability held by it consequent to the applicability of Section 115TD in the absence of registration.

Further, it has been provided that a trust or institution which has been registered under new Section 12AB it shall be required to apply for re-registration at least six months prior to the expiry of the period of registration i.e. 5 years. Thus, there will be an obligation on trust registered to apply for re-registration at least six months prior to the expiry of the period of registration of 5 years. It is to be noted that at the time of re-registration, the Commissioner shall call for such documents or information and make enquiry to satisfy himself about the genuineness of the activities of the trust or institution and also the compliance of such requirement of any other law for a time being enforced by the trust or institution which may be material for the purpose of achieving its object. It is only after being satisfied about the objects of the trust, the genuineness of the activities of the trust and the compliance of the requirement of any other law for the time being enforced that the Commissioner shall pass an order granting registration under Section 12AB. Such order of re-registration shall also be for a period of five years only and such trust shall again be required to apply for re-registration at least for six months before the expiry period of re-registration of five years. Such order of registration or re-registration can be passed by the Commissioner within a period of six months from the end of the month in which the application for registration or re-registration is made.

Apparently, there was no reason for asking re-registration of such trust and then to restrict the registration for a period of 5 years. All these trusts or institutions are managed by part-time/retired persons and do not have much resources or access to professional advice.

Thus, to expect from such trusts or institutions, a high level of compliance apparently is not desirable. As analyzed above, the implication of registration being cancelled are far reaching i.e. tax at the maximum marginal rate on the fair market value of the net worth of the company in view of provision of Section 115TD of the Act.

The proposed amendment shall be effective from 1st June, 2020.

2. Provisional registration to be granted to a new trust or institution

The Finance Bill, 2020 has proposed to grant provisional registration to a new trust or institution. The application for such registration has to be made at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought. On making such application, an order shall be made granting provisional registration for a period of three years from the assessment year from which the registration is sought. This order shall be passed by the Commissioner within a period of one month from the end of the month in which the application was received. Further, it has been provided that such trust or institution which has been provisionally registered, it shall apply for regular registration at least six months prior to the expiry of the provisional registration or within six months of commencement of its activities whichever is earlier. On application so filed by such trust or institution, the Commissioner will follow the same process as is for re-registration i.e. calling for document and information, making enquiry and after satisfying himself about the genuineness of the activities and the objects of the trust or institution and the compliance of such requirement of any other law as is material for the purpose of achieving the objects of the trust or institution, he shall grant regular re-registration which shall be for a period of five years.

It may be relevant to point out sub-clause (vi) of clause (ac) of section 12A(1) in the Finance Bill, 2020 has put a condition of making an application one month prior to the commencement of the previous year relevant to the assessment year from which the registration is sought. This clause is intended for new trust or institution. However, practically it may not be possible for a new trust or institution to make an application one month prior to the previous year for which registration is sought. Take a case that in case a trust is created in May, 2020 and it needs a registration in respect of the activities which include donation received in the financial year (previous year) 2020-21. As per the condition of this clause (vi), in order to be eligible to claim exemption in respect of donation received during this financial year 2020-21, it ought to have applied for registration one

month prior to the beginning of the previous year 2020-21 i.e. in February 2020. This is practically impossible as the trust itself has come into existence in May, 2020. Apparently, there appears to be a drafting error. The requirement should be to make an application within one month from the beginning of the assessment year. This will take care of the trust or institution which get registered in the last month of the financial (previous year) say March, 2021 and it receives donation in the month of March 2021 itself on which it will be claiming exemption. Thus, a period of one month from the end of the previous year or one month from the beginning of the assessment year will be the right condition rather than one month prior to the commencement of the previous year.

The proposed amendment shall be effective from 1st June, 2020.

3. Application for re-registration to be made within 30 days in the case of modification of the object

The Finance Bill, 2020 has reiterated the existing provision in section 12A to provide that wherein trust or institution has adopted or undertaken modification of its objects which do not conform to the conditions on the basis of which registration was granted earlier, then such trust or institution shall again apply for registration within a period of 30 days from the date of said adoption or modification. The Commissioner in such case will call for information for verification and follow the same process as in the case of re-registration or renewal of its registration.

This amendment shall be effective from 1st June, 2020.

4. All pending applications for registration to be considered as application under new section 12AB

It has been proposed in the Finance Bill, 2020 that all pending applications for registration as on 1st June, 2020 on which order has not been passed shall be deemed to be an application under this new section 12AB and hence, such applicant shall not be required to file the application again. Such application will be dealt with as per the new provision of Section 12AB of the Act.

This amendment shall be effective from 1st June, 2020.

5. Commissioner empowered to cancel registration

The new section 12AB has enabling provision on the same line as is in the existing section 12AA, empowering the Commissioner to cancel the registration in case he is satisfied that the activities of the trust are not genuine or not being carried out in accordance with the objects of the trust or where the trust is not eligible for exemption under section 11 or section 12 in view of the violation of section 13(1) of the Income Tax Act or the trust or institution has not complied with the requirement of any other law for the time being enforced and the same is likely for the purpose of achieving the objects of the trust or institution.

This amendment shall be effective from 1st June, 2020.

6. Approval for exemption under Section 10(23C) to be obtained again

The Finance Bill, 2020 has proposed similar amendment as in the case of trusts or charitable instructions under section 12A (ac) and 12AB in respect of trust or institution claiming exemption under section 10(23C). All such trusts or institutions shall be required to apply for approval again within a period of three months from 1st June, 2020 i.e. by 31st August, 2020 and the approval so given shall be for a period of five years. The approval shall be granted for a period of 5 years and it has to be renewed again after a period of 5 years by making an application at least 6 months prior to the expiry of the registration period of 5 years. On making application for re-registration or renewal of registration, the Commissioner shall follow the same process as is proposed for renewal of registration under section 12AB i.e. calling for document and information, making enquiry and after satisfying himself about the genuineness of the activities and the objects of the trust or institution and the compliance of such requirement of any other law as is material for the purpose of achieving the objects of the trust or institution, he shall grant regular re-registration which shall be for a period of five years.

Further, it has been proposed in the Finance Bill, 2020 that all pending applications as on 1st June, 2020 on which order has not been passed shall be deemed to be an application under the new procedure and hence, such applicant shall not be required to file the application again.

This amendment shall be effective from 1st June, 2020.

7. Approval under Section 80G also to be obtained again

The Finance Bill, 2020 has proposed similar amendment in respect of the approval under section 80G. As per the amendment, all trusts or institutions which have obtained approval for the purpose of the deduction under section 80G shall be required to apply again for seeking approval within three months from the first day of June, 2020 i.e. 31st August, 2020. In case such approval is not applied, then donation made to such trust or institution shall not be eligible for deduction under Section 80G. Such approval shall be for a period of 5 years and has to be applied again at least 6 months prior to the expiry of the period of registration. The Commissioner shall follow the same process as is proposed for renewal of registration under section 12AB i.e. calling for document and information, making enquiry about the genuineness of the activities of the trust or institution and fulfilment of all the conditions stated in Section 80G(5).

Further, it has been proposed in the Finance Bill, 2020 that all pending applications for approval under Section 80G as on 1st June, 2020 on which order has not been passed shall be deemed to be an application under the new procedure and hence, such applicant shall not be required to file the application again.

This amendment shall be effective from 1st June, 2020.

8. Obligation on Trust or Institution to file annual statement of donation

The Finance Bill, 2020 has proposed to insert Clause (viii) and (ix) in Section 80G (5) requiring trust or institution approved under section 80G to file statement of donation received and also to issue the certificate to the donor. It has been further stated that deduction on account of donation under section 80G shall be allowed to the donor only on the basis of the statement filed by the donee trust or institution. The statement has to be filed in the prescribed form and within such time as may be prescribed by the Rules. In case of delay in filing such statement a late fee of Rs.200 per day shall be applicable under newly inserted section 234G of the Act. Further, a penalty under Section 271K, which shall not be less than Rs.10,000/- and which may extend up to Rs.1.0 lakh shall be leviable if the trust or institution fails to file such statement.

This amendment shall be effective from 1st June, 2020.

9. Scientific research association, university, college approved under Section 35(1) also to intimate for renewal of registration and file annual statement

The Finance Bill, 2020 has proposed similar amendment, as in the case of trusts under section 80G, in respect of scientific research association, universities, colleges approved for accepting contribution under section 35(1) requiring such scientific research association, universities or colleges, as the case may be, to intimate the income tax authority in the prescribed form and manner within a period of three months from 1st June, 2020 i.e. 31st August, 2020 and upon such intimation, the approval already provided shall be valid for a period of 5 years beginning from AY 2021-22. Further, it has been provided that any notification issued by the Central Government, after the date on which Finance Bill, 2020 receives ascent, to provide approval to a scientific research association or university or a college as the case may be shall not be valid for a period exceeding 5 years. Further, such associations shall also be required to file a statement of the contribution received by it in the prescribed form by the prescribed date, similar to trusts or institutions as proposed under section 80G, and in case of delay in filing such statement, it shall also be liable to pay fee of Rs.200 per day under Section 234G of the Act and also be liable for penalty under Section 271K which shall not less than Rs.10,000/- and which may extend to Rs.1 lakh. The benefit of deduction to the contributor shall be allowed on the basis of the statement filed by such association.

This amendment shall be effective from 1st June, 2020.

10. Donation for scientific research in cash not to exceed Rs.2,000

The Finance Bill, 2020 has proposed to amend Section 80GGA for deduction in respect of donation for scientific research or rural development. As per the present sub-section (2A) of the Section 80GGA, no deduction is allowed in respect of any sum exceeding Rs.10,000/- paid in cash. This amount is being reduced to Rs.2,000/-. Accordingly, no deduction shall be allowed in respect of any amount exceeding Rs.2,000/- under the section in respect of donation for scientific research unless such sum is paid by any mode other than cash.

This amendment shall be effective from 1st June, 2020

D. SALARIES

1. Exemptions in respect of contribution by employer to Provident Fund, Superannuation Fund and National Pension Fund restricted to Rs.7,50,000

The Finance Bill, 2020 has proposed to substitute existing sub-clause (vii) in Section 17(2) for taxing the aggregate contribution by the employer to a recognized provident fund, to an approved superannuation fund and contribution to pension scheme, in case the same exceeds Rs.7,50,000, as perquisites. Presently, the contribution by the employer to a recognized provident fund up to 12% of the salary without any overall ceiling is exempt under Rule 6A of Schedule IV of the Income Tax Act. The contribution to the superannuation fund up to Rs.1,50,000 is exempt under existing clause (vii) of Section 17(2). Further, contribution up to 14 per cent of the salary by the Central Government and 10 per cent of the salary by any other employer towards National Pension Scheme is exempt under Section 80 CCD(1). Thus, in the case of an employee with higher salary income, the amount contributed to recognized provident fund and National Pension Fund being percentage of the salary is much higher as compared to the employee who has low salary income. Now, as per the proposed amendment, any amount contributed in excess of the overall ceiling of Rs.7,50,000/- in respect of aggregate of contributions to these three funds taken together is considered to be perquisites and taxable in the hands of the employees. This amendment will have an impact on employees having salary income of Rs. 27.30 lakhs or more in case such employees are getting all the three contributions from its employer as can be seen from the following table:

Salary	Contribution to EPF @ 12% of salary	Contribution to NPS @ 10% of salary	Contribution to Superannuation fund	Total Contribution	Contributions in excess of Rs. 7.5 lakhs now taxable in the hands of the employees pursuant to the amendment	Total taxable salary
A	**B=A*12%**	**C=A*10%**	**D**	**E=B+C+D**	**F = E- 7.5 lakhs**	**G=A+F**
1,000,000	120,000	100,000	150,000	370,000	-	1,000,000
2,000,000	240,000	200,000	150,000	590,000	-	2,000,000
2,500,000	300,000	250,000	150,000	700,000	-	2,500,000
2,730,000	327,600	273,000	150,000	750,600	600	2,730,600
3,000,000	360,000	300,000	150,000	810,000	60,000	3,060,000
3,500,000	420,000	350,000	150,000	920,000	170,000	3,670,000
4,000,000	480,000	400,000	150,000	1,030,000	280,000	4,280,000
4,100,000	492,000	410,000	150,000	1,052,000	302,000	4,402,000
4,200,000	504,000	420,000	150,000	1,074,000	324,000	4,524,000
5,000,000	600,000	500,000	150,000	1,250,000	500,000	5,500,000
6,000,000	720,000	600,000	150,000	1,470,000	720,000	6,720,000
7,000,000	840,000	700,000	150,000	1,690,000	940,000	7,940,000
8,000,000	960,000	800,000	150,000	1,910,000	1,160,000	9,160,000
9,000,000	1,080,000	900,000	150,000	2,130,000	1,380,000	10,380,000
10,000,000	1,200,000	1,000,000	150,000	2,350,000	1,600,000	11,600,000

In the case of such employees where the employer is contributing only to the recognized provident funds, such employees which have salary income of Rs. 62.5 lakhs and above will get affected by such provision.

It may be relevant to point out that the existing clause (vii) has a restriction of Rs.1,50,000/- in the year in respect of contribution to the superannuation fund. Since this clause has been substituted with the new clause, there will be overall ceiling of Rs.7,50,000/- in respect of all the three contributions. This will mean that in case there is a contribution by the employer upto Rs.7,50,000/- towards approved superannuation fund and there is no other contribution to recognized provident fund or National Pension Scheme, the entire amount of superannuation up to Rs.7,50,000/- will be exempt. However, it may be noted that maximum contribution towards superannuation fund cannot exceed 27 per cent of the salary in view of Rule 87 and Rule 88 of the Income Tax Rules which provides that contributions by the employer to a superannuation fund in respect of any particular employee shall not exceed 27 per cent of his salary for each year as reduced by the employer's contribution, if any, to any provident fund in respect of the same employee for that year.

<u>Anomaly</u>

Particulars	Computation	Amount
Salary	A	62,50,000
Contribution towards recognised provident fund @ 14% of salary	B	8,75,000
Perquisite under section 17(1)(vi)	C =A*2%	1,25,000
Perquisite under proposed section 17(2)(vii)	D= B - 7,50,000	1,25,000
Total taxable salary	E = A+C+D	65,00,000

The Finance Bill, 2020 further proposes to add a new clause (viia) to provide that accretion by way of interest, dividend or any other amount on the balance to the credit of any such fund i.e. recognized provident fund, superannuation fund, National Pension Scheme in respect of the excess of contribution over and above Rs.7,50,000/- will also be taxable in the hands of the employees as perquisite. In this regard, it may be relevant to point out that this clause is being made applicable from Assessment Year 2021-22 and accordingly, only in respect of the amount exceeding Rs.7,50,000/- contributed from Assessment Year 2021-22 onwards, the interest, dividend or any other amount on such excess amount will

be chargeable to tax. In respect of any amount exceeding Rs.7,50,000/- contributed before Assessment Year 2021-22, the interest, dividend or any other amount thereon will not be considered as perquisite and hence not be chargeable to tax in the hands of the employee.

2. Tax on ESOP of start-ups to be paid after 5 years of exercising the option

At present, perquisite by way of ESOP is taxed as income in the year in which the option is exercised by the employee under section 17(2) of the Income Tax Act. The Finance Bill, 2020 considering the issue of cash flow as employee may not have the requisite funds to make payment of the tax on such perquisite which is given by way of shares in the company, has proposed to collect tax on such perquisite after 4 years from the end of the Assessment Year in which such option is being exercised. This will mean 5 years from the end of the Financial Year in which option is exercised. It is to be noted that income will be included and assessed in the year in which such option is exercised. It is only the payment of tax which is being postponed. However, in case, such share is sold by the assessee or the assesse ceases to be employee of the employer then the tax shall be payable within the 14 days from that date. It is one of the typical case where taxability of the income is not being postponed but payment of tax on such income is being postponed and for this purpose alone amendment has been proposed in section 156 to postpone the demand of tax, section 140A to postpone payment of self assessment tax, section 192 to postpone tax deduction at source and also in section 191 for assessee to pay the tax direct. It is also surprising that the reason for such amendment is to ease the burden of payment of taxes by the employees of eligible start-ups. This burden and the issue of fund flow with the employee at the time of exercise of option of ESOP is not only for employees of eligible start-ups but with all the employees who get such ESOPs. Ideally, the benefit should be extended to all the employees. Further, instead of making the law so complex to tax income in the year in which option is exercised and to postpone payment of tax on such income for 5 years, it would have been much easier that the recognition of the income itself would have been postponed. This amendment is being made from 1st April, 2020.

E. BUSINESS

1. Relaxation in respect of circle rate increased from 5% to 10% on sale of immovable property

As per existing provision of section 43CA, while computing business income in respect of sale of land or building or both, in case the stamp duty valuation exceeds the actual sale consideration, then the stamp duty value is considered as full consideration for computing the business income. The Finance Act, 2018 has relaxed this provision by making an amendment to the effect that where the stamp duty valuation does not exceed 105% of the actual consideration received, then the business income shall be computed on the basis of the actual consideration received. The Finance Bill, 2020 has further relaxed this provision by allowing difference between the actual sale consideration and the stamp duty valuation of 10% as against 5%. Accordingly, the business income under section 43CA shall be computed on the basis of the actual consideration received in case the stamp duty valuation does not exceed 110% of such consideration. It is to be noted that such amount of 10% is to be computed on actual consideration received and not on the stamp duty valuation.

2. Extension of time limit for approval of affordable housing project for availing deduction under section 80-IBA by 1 year

The Finance Act, 2016 inserted section 80-IBA to give exemption in respect of income derived from the business of developing and building affordable housing project which is approved by the competent authority between 01.06.2016 to 31.03.2019 and such project is completed within a period of three years from the date of the first approval by the competent authority. The applicability of the above section was extended by the interim budget of 2019 in respect of projects which is approved by the competent authority up to 31.03.2020. The Finance Bill, 2020 has proposed to further extend the period of approval of the project by the competent authority to 31st March, 2021.

3. Tenure for claiming deduction by Start-ups increased from 7 to 10 years and turnover threshold increased from Rs. 25 crore to 100 crore

The existing provisions of section 80-IAC of the Act provide for a deduction of an amount equal to one hundred per cent of the profits and gains derived from an eligible business by an eligible start-up for 3 consecutive assessment years out of 7 years, at the option of

the assessee, subject to the condition prescribed. Section 80-IAC is now proposed to be amended so as to provide that the deduction under the said section 80-IAC shall be available to an eligible start-up for a period of 3 consecutive assessment years out of 10 years beginning from the year in which it is incorporated as against the period of 7 years.

Further, the definition of eligible start-up is also proposed to be amended. Finance Act, 2016 which inserted the provision of section 80-IAC provided that the eligible start-up means a company or a LLP which is engaged in an eligible business and which fulfils the prescribed conditions. One of the conditions prescribed is that the total turnover of the business should not exceed Rs. 25 crore in any of the previous year on or after 01.04.2016 and ending on 31.03.2021. This condition was subsequently amended vide Finance Act, 208 to provide that the total turnover of the eligible business should not exceed Rs. 25 crore in the previous year relevant to the assessment year for which deduction is being claimed. The Finance Bill, 2020 has now been proposed to enhance the threshold limit of turnover of Rs. 25 crore to Rs. 100 crore. The implication of this amendment will be that the assessee can now claim an enhanced deduction on account of increase in such threshold limit of turnover.

It may be noted that the Explanatory Memorandum to the Finance Bill, 2019 proposes to amend the provision of section 80-IAC to provide that the deduction under the section 80-IAC shall be available to an eligible start-up, if the total turnover of its business does not exceed one hundred crore rupees in any of the previous years beginning from the year in which it is incorporated. However, the Finance Bill, 2019 has only proposed to amend the threshold limit of turnover of Rs. 25 crore to 100 crore in the year in which deduction is being claimed and there is no such restriction that turnover should not exceed Rs. 100 crore in any of the year in beginning from the year in which it is incorporated. It may be relevant to point out that in absence of any amendment to the language of section 80-IAC, the only requirement is that the turnover should not exceed Rs. 100 crore in the previous years in which deduction is being claimed i.e. the 3 consecutive years out of the 10 years block. Accordingly, the turnover may exceed Rs. 100 crore in other years. This may not be the intention of the Legislation as apparent from the Explanatory Memorandum and accordingly may be subject to dispute.

This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years. While the amendment is made effective from assessment year 2020-21, start-ups that have been incorporated prior to 1.04.2020 and having turnover more than Rs. 25 crore but within Rs. 100 crore should be eligible for such benefit. Similarly, the extended period of 10 years should be available to the start-ups incorporated prior to 01.04.2020.

F. CAPITAL GAIN

1. Relaxation in respect of circle rate increased from 5% to 10%

As per existing provision of section 50C, while computing capital gain in respect of a capital asset being land or building or both, in case the stamp duty valuation exceeds the actual sale consideration, then the stamp duty value is considered as full consideration for computing the capital gain. The Finance Act, 2018 has relaxed this provision by making an amendment to the effect that where the stamp duty valuation does not exceed 105% of the actual consideration received, then the capital gain shall be computed on the basis of the actual consideration received. The Finance Bill, 2020 has further relaxed this provision by allowing difference between the actual sale consideration and the stamp duty valuation of 10% as against 5%. Accordingly, the capital gain under Section 50C shall be computed on the basis of the actual consideration received in case the stamp duty valuation does not exceed 110% of such consideration. It is to be noted that such amount of 10% is to be computed on actual consideration received and not on the stamp duty valuation.

2. Fair market value for substituted cost of acquisition as on 1st April 2001 to be on the basis of stamp duty valuation

As per the provision of section 55 of the Income Tax Act, while computing capital gain in respect of a capital asset held on or before 01.04.2001, the cost of acquisition can be substituted by fair market value as on 01.04.2001. There have been disputes on the fair market value as on 01.04.2001 particularly in respect of land and building. In order to address these disputes, the Finance Bill, 2020 has inserted a proviso in Section 55 to the effect that in respect of land or building or both, the fair market value as on 01.04.2001

shall not exceed the stamp duty value, wherever available, of such asset as on 01.04.2001. Accordingly, where circle rates have been notified by the State Government as on 01.04.2001, the same will be the basis for computing fair market value as on 01.04.2001. However, where circle rates have not been notified by the State, then the fair market value shall be computed in accordance with the comparable instances available of that period. It is to be noted that circle rates were not notified on 01.04.2001. The circle rates were first notified in the year 2007.

G. INCOME FROM OTHER SOURCES

1. Relaxation in respect of circle rate increased from 5% to 10% on purchase of immovable property

The Finance Bill, 2020 has proposed an amendment in section 56(2)(x) whereby in case any land or building is purchased at a value less than the stamp duty valuation, the difference is deemed as income from other sources. As per the proposed amendment, in case the stamp duty value does not exceed 110% of the actual consideration paid, then, there will be no deemed income in the hands of the buyer of land and building under this Section 56(2)(x). It is to be noted again that in case the stamp duty value exceed 110%, then the entire difference including 10% will be considered as income from other sources. Thus, this 10% is not a threshold exemption.

2. Restriction on deduction of expenditure against dividend income

The Finance Bill, 2020 has inserted a proviso after Clause (i) of Section 57 providing that no deduction shall be allowed from dividend income or income in respect of units of a mutual fund. The only deduction that will be allowed against dividend income will be of interest and that too shall also be restricted to 20% of the dividend income. This restriction of not allowing any deduction of expenditure incurred for earning dividend income is contrary to the provisions of Section 14A whereby a presumption has been created that for earning exempt income, which includes dividend income, certain expenditure is required to be incurred. With this proviso restricting the expenditure, there is a possibility of litigation on the issue of expenditure incurred in earning dividend income. The assessing officer may contend that out of the total business expenditure incurred during the course of the business, a part of administrative expenditure incurred is towards earning dividend

income and hence the same is not eligible for deduction while computing business income. Such expenditure identified by the assessing officer will not be eligible as deduction while computing dividend income in view of the restriction placed by this proviso to Clause (i) of Section 57. On the issue of interest also, in case the interest expenditure attributable to dividend income exceeds 20 per cent, such interest may also not be eligible for deduction both while computing business income as well as computing dividend income. Having proposed to consider the dividend income as normal income in the hands of the shareholder, there is no justification in not allowing all the expenditure incurred to earn such dividend income and putting restriction by this proviso to Section 57(i). All expenditure incurred including interest for earning dividend income need to be allowed without putting such statutory restrictions as such restrictions goes against the real income theory.

H. International Taxation

1. Period of stay for non-resident Indian being reduced from 182 days to 120 days

As per the provisions of Section 6(1) of Income Tax Act, an individual is said to be resident of India if he has been in India for a period of 182 days or more. Further, an individual is also considered to be resident if during the year he has been in India for 60 days or more and such person has been in India within the last four years for a period of 365 days or more. On fulfilling of either of the above condition, an individual is considered to be a resident in India. However, in order to give concession to citizens of India, in the existing Explanation below this section 6(1), it has been provided that a citizen of India who leaves India in any previous year as a member of the crew of Indian ship or who leaves India for the purpose of employment outside India, then the second condition of 60 days stay in India, in case he has been in India for 365 days or more in the four preceding years, will be relaxed and such Indian citizen will not be considered as resident if he is in India for less than 182 days during the year despite the fact that such individual has been in India for 365 days or more in the preceding four years. This relaxation is applicable in the first year when an Indian citizen leaves India to become non-resident.

In the case of citizens of India and person of Indian origin who have become non-resident, the above Explanation further gives a relaxation to such citizens of India on similar lines. For such non-resident citizen of India who being outside India comes on a visit to India in

any year, such Indian citizen will not be considered to be resident of India if the stay in India is less than 182 days despite the fact such Indian citizen was in India for 365 days or more in the preceding four years. This relaxation has been given only to citizen of India considering the fact that Indian citizen may be required to visit India frequently for social obligation, health, taking care of the parents etc. The Finance Bill, 2020 has now proposed an amendment whereby the visit of Indian citizen who are non-resident has been restricted to less than 120 days in a year. Accordingly, Indian citizen who are non-resident their stay in India during the year has to be less than 120 days in order to maintain the status of non-resident if they have been in India for a period of 365 days or more during the preceding four years. This amendment will affect the frequent visit of the non-resident Indian as non-resident Indian will have to restrict their stay in India to less than 120 days, otherwise such non-resident Indian will be considered as resident and liable to pay tax on global income.

This may cause hardship to many non-resident Indian citizen as well as person of Indian origin if they have to stay in India for period of 120 days or more on account of health, social obligation, taking care of the parents or any other contingency. This may ultimately also reduce bonding of non-resident Indian citizen settled abroad with India. The country has been greatly benefited by the contribution of Indian citizen settled abroad. This amendment has been proposed on the reasoning that the period of 182 days is being misused by many individuals who are actually carrying out substantial economic activities from India and such individual manage their stay in India, so as to remain a non-resident and hence are not required to declare their global income in India. Though there may be many such individuals which may be managing their period of stay of less than 182 days so as to avoid paying tax on global income in India but merely on that reasoning the law should not be changed as it will affect not only these individuals who are misusing such provision, but also all non-resident Indian citizens who are not misusing this provision but are otherwise required to be in India on account of health, social obligation, taking care of the parents or any other contingency. Further, the objective of collecting tax on global income from those individuals who manage their period of stay in India to avoid paying tax on global income in India will still not pay tax on global income as such individual will now manage their period of stay in India of less than 120 days as against less than 182 days at present for avoiding payment of tax on global income in India. It may be relevant to point out that this period of 182 days has been reduced to 120 days in the case of the citizen of India or person of Indian origin who having been outside India comes on a visit

to India. The period of 182 days shall continue to apply in respect of citizen of India in the first year when they become non-resident when they leave India as a member of the crew of the ship or for the purposes of employment outside India. Thus, in the first year the benefit of 182 days will still be available but after first year the period of stay in India has to be less than 120 days for Indian citizens and persons of Indian origin in case such non-resident wants to continue to enjoy the status of non-resident.

2. Indian Citizens to be considered as deemed resident of India

The Finance Bill, 2020 has proposed an amendment in Section 6 by inserting sub section (1A) whereby an Indian Citizen i. e irrespective of the fact that such Indian citizen was not in India for more than 182 days during the year, such Indian citizen will be deemed to be a resident of India and consequently liable to pay tax on global income, if such Indian citizen claims that he is not liable to tax in any other country by reason of his domicile / residence or any other criteria of similar nature. The objective of this amendment has been stated to tax such Indian citizens who claim themselves as stateless persons as it is possible for an individual to arrange his affairs i.e. stay in the various countries in the manner that he does not become resident of any country during the year and hence not liable to pay tax on its income in any of the country. This amendment will have far reaching implications on all Indian non-residents despite the fact such non-residents may not be liable to be considered as resident of India.

Now, the first implication will be that of jurisdiction on all such Indian non residents of Indian Income Tax Officer. If any person is an Indian Citizen and despite the fact such person is non resident of India and bonafide resident of any other country even say USA or Europe, the Income tax officer with this amendment has got a jurisdiction on all Indian non resident Citizens to issue notice and ask for details of global income and evidence of payment of tax on such income in one or other country. If tax has not been paid on any part of the global income, then Income Tax Officer can ask why the same has not been paid and if such Indian non resident claims that he has not been paid tax because he has earned income in a country where it is not taxable and if he is not resident of that country, then this clause may get invoked. Thus, the implications of the amendment will be:

1. Jurisdiction of Indian Income Tax Officer to question all Indian Non Residents
2. To ask details of all global income from Indian non residents which will include bank accounts and investments outside India.
3. To ask all Indian non residents to establish of which country such Indian person were residents during the relevant year.
4. To demonstrate tax has been paid in the country of their residence on all global income by such Indian non residents.
5. If tax has not been paid on any part of global income, to explain why and on which ground it has not been paid.
6. If tax has not been paid on any income on the ground that he is not domiciled/ resident of that country where such income has been earned, then Indian Tax officer will consider such person as deemed resident under this proposed amendment.
7. If a person is considered as deemed resident of India, such person under Indian Income Tax becomes liable to pay tax on all global income in view of provision of section 5(1) of the Income Tax Act, whereby a resident is liable to pay tax on entire global income.

The above analysis shows that the most crucial implication of the proposed amendment is jurisdiction/ right of Income Tax officer to question all Indian non residents, to seek details of global income and shifting of onus on all such Indian non residents to demonstrate whatever income he has earned, he has paid tax on such income in one of the country, otherwise the same will be liable for taxation in India. It is further important to note that the clarification issued by CBDT on 2nd February, 2020 to allay above apprehension has not only added to the confusion but goes against the provision of Income Tax Act applicable as on date.

The clarification issued by CBDT states that "*in case of an Indian citizen who becomes deemed resident of India under this proposed provision, income earned outside India, shall not be taxed in India unless it is derived from an Indian business or profession".*

The above clarification is contrary to the provision of section 5(1) of the Income Tax Act. There is no such provision whereby in the case of a resident of India which will include deemed resident that income earned outside India will not be taxable and only income

derived from an Indian business or profession will be taxable. The deeming fiction proposed in the Finance Bill, 2020 doesn't state so. The proposed amendment states that such Indian resident will be a deemed resident. Once a person is deemed to be resident of India, under Section 5(1), such person will be liable to pay to tax on its global income which includes not only income earned in India but also income earned abroad. It cannot be said that in such case, only income derived from an Indian business or profession only will be taxed in India. The resident has to pay tax on entire income from all sources whether earned in India or abroad. Once a deeming fiction is created that the person is deemed to be resident, then all consequences have to follow. Further, under existing law also, every non-resident irrespective of his citizenship is required to pay tax on all income earned in India. It can't be interpreted that such person will be required to pay tax only on income derived from business or profession in India. . It is to be noted that it is only in the case of resident but not ordinary resident that the income derived from a business controlled in or a profession set up in India is taxable in India. But this status of resident but not ordinary resident has another condition that such person should be non-resident in 9 (proposed to be reduced to 7 out of 10 preceding years. Thus, the benefit of this clause may not be applicable to all the non-residents who may be considered as deemed residents under the proposed amendment. Further, the use of the word "bonafide" in the clarification further gives an authority to Income Tax officer to challenge the status of non-resident. The proposed amendment and the clarification can have serious implications by interpreting that all those Indian Citizens who are not liable to pay tax in the country of their residence, as deemed resident of India and being asked to pay tax in India even on income earned in the country of residence of course subject to benefit of tax credit in respect of tax, if any, paid outside India in such income. This may lead to a situation where such Indian may surrender Indian Citizenship and obtain Citizenship of any other country so as to avoid all such complications.

3. Period of Not Ordinarily Resident being extended to four years

As per the provision of Section 6(6) an individual and HUF is considered to be not ordinarily resident in India during the year if such individual or Karta of such HUF has been a non-resident in 9 out of the 10 preceding years or has been in India for a period of less than 730 days during the preceding 7 years. Further as per the proviso to Section 5(1) such resident is not liable to pay tax in respect of income which accrues or arises to him outside India during the year except such income which is derived from a business

controlled in or a profession set up in India. The Finance Bill, 2020 has proposed to give extended period of this status of not ordinarily resident by considering the status as not ordinarily resident if such person has been non-resident in 7 of the 10 preceding years as against 9 of the 10 preceding years at present. The other condition of a period of less than 730 days during the preceding 7 years is proposed to be deleted. With this relaxation such person i.e. an individual or HUF can have a status of not ordinarily resident for a period of four years as against two years at present. During this period when the status is that of not ordinarily resident such person shall not be required to pay tax on income which accrues or arises to him outside India during the year except income derived from the business controlled in or a profession set up in India. This amendment may be beneficial to many expats who comes to India for employment as these expats will be able to enjoy the status of resident but not ordinary resident for a period of 4 years from the year they become resident in India and consequently will not be required to pay tax on their global income during this extended period of 4 years of resident but not ordinary resident.

4. Scope of Dispute Resolution Panel (DRP) being expanded

As per the existing section 144C of the Act, a foreign company or a person in whose case an adjustment on account of transfer pricing has been made, the Assessing Officer is required to pass a draft assessment order rather than the final assessment order and such person are eligible to file an application before the DRP against the draft assessment order. During the pendency of the application before the DRP, the demand if any arising consequent to any addition proposed in the draft assessment order is not enforceable. The Finance Bill, 2020 has proposed to expand the scope by including all non-resident not only foreign companies. Further, at present the route of DRP is available where AO proposes to make any variation in the income or loss declared by the assessee. Considering the fact that the dispute sometime is not limited to variation in income or loss but also on the tax rate applicable on the income declared by the Assessee, the Finance Bill, 2020 has proposed to expand the scope so that the cases where AO proposes to make any variation which is prejudicial to the interest of the assessee will be eligible for following the route of DRP. This amendment is being made from 1st April, 2020. Thus, after 1st April, 2020, if the AO intends to make any variation in respect of non-resident including foreign companies or in respect of transfer pricing adjustment, he will have to pass a draft assessment order giving an option to the assessee to file application before

the DRP. It is only if the assessee does not choose to file application before the DRP, the AO shall pass the final assessment order against which appeal can be filed to CIT(A).

5. Exempting non-resident from filing of Income-tax return in case its total income consists of Royalty or Fees for Technical Services (FTS)

Section 115A provides for special rate of tax applicable to non-residents in respect of income in the nature of interest, dividend, royalty or fees for technical service. The existing provisions of section 115A of the Act provides relief to non-residents from filing of return of income in case the total income of such non-residents consists of income in the nature of interest or dividend which is chargeable to tax at special rate under section 115A of the Act and where TDS has been deducted in respect of such dividend or interest income and the non-resident is not liable to pay any tax other than by way of the TDS so deducted. The same relief was not available to non-residents whose total income consists of the income in the nature of royalty or fees for technical services which is chargeable to tax at special rate under section 115A of the Act. The Finance Bill, 2020 proposes to amend the provision of section 115A(5) to extend such benefit of not filing the return of income to non-residents whose total income consists of only income in the nature of royalty or fees for technical services which are chargeable to tax at special rate under section 115A of the Act and TDS has been duly deducted in accordance with the provision of the Act at rate not less than the rate at which income is chargeable to tax under section 115A of the Act. This amendment is being made from 1st April 2020 and hence, the same will be applicable from the assessment year 2020-21 i.e. financial year 2019-20.

6. Scope of Advance Pricing Agreement (APA) and prescribing safe harbour rules being extended to attribution of profit to PE

At present, a lot of disputes are on the issue of attribution of profit to the permanent establishment of a non-resident. In order to avoid such disputes, the provision of section 92CC are being widened so as to allow entering into APA in respect of attribution of profit to PE of a non-resident. This amendment is being made from 1st April, 2020 and accordingly apply to an APA entered into on or after 1st April, 2020. It may be relevant to point out that under APA, the agreement can be entered into for five future years and such agreement can be rolled-back for four earlier years preceding the year for which the APA is entered into.

Similarly, the provisions of section 92CB are being widened to enable the Board for making safe harbour rules in respect of attribution of profit to PE. This amendment is being made w.e.f. 1st April, 2020 and accordingly, apply to Assessment Year 2020-2021 onwards

7. DTAA being aligned with Multi Lateral Instrument (MLI)

The Finance Bill, 2020 has proposed to amend section 90 and 90A of the Act empowering the Central Government to enter into agreement with the Government of any other country or specified territory outside India for avoidance of double taxation of income under the Indian Income Tax Act and corresponding Income Tax Law in force in other country or specified territory without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance which includes treaty shopping arrangements aimed at obtaining benefit provided under the agreement in direct benefit of resident of any other country or territory. This amendment is being made consequent to the India signing the Multi-Lateral Conventional to implement tax treaty related measures so as to prevent base erosion and profit shifting. This will have far reaching impact as under MLI, benefit of treaty i.e. DTAA can be denied in case of tax evasion or avoidance through the treaty. This amendment shall be effective from 1st April, 2021 i.e. Assessment Year 2021-22.

I. ASSESSMENT

1. Threshold for Tax Audit under Section 44AB increased from Rs.1 crore to Rs.5 crore

The Finance Bill, 2020 has proposed to increase the threshold for tax audit from Rs.1.0 crore to Rs.5.0 crore. As per the existing provision, every person carrying on business is required to get accounts audited if its total sales, turnover or gross receipt in business exceeds Rs.1 crore whereas a person carrying on profession is required to get accounts audited if the gross receipt in profession exceed Rs.50 lakh in the year. The Finance Bill, 2020 has proposed to increase the threshold only in respect of the person carrying on the business from Rs.1 crore to Rs.5 crore with a condition that this enhanced limit of Rs.5 crore will be applicable only where aggregate of all receipts in cash during the year does not exceed 5% of total receipts and also aggregate of all payments made in cash during the year does not exceed 5% of total payments. It is to be noted that 5% is to be computed on the basis of aggregate of receipts irrespective of the fact whether such receipts are in respect of sales, turnover or otherwise. Similarly, 5% of the total payment is to be computed in respect of all the payment made which not necessarily regarding purchases

and expenses. In case either receipts or the payment exceed 5% of the total receipts or the payment, as the case may be, then the threshold for tax audit shall be Rs.1 crore and not Rs.5 crore. There is no change in respect of requirement of audit in the case of person carrying on a profession which shall continue to be Rs.50 lakhs. This amendment is being made from 1st April 2020 and hence, the same will be applicable from the assessment year 2020-21 i.e. financial year 2019-20.

Assessee having turnover between Rs.2 crore to Rs.5 crore can declare lower profit even without tax audit

It may be relevant to also note that as per provision of section 44AD, in the case of person carrying on business and whose turnover or gross receipt does not exceed Rs.2 crore, the sum equal to 8% of the total turnover or gross receipt is deemed to be the profit and gains of the business. In case the amount is received vide an account payee cheque, an account payee bank draft, ECS or other prescribed electronic modes, 6% of the total turnover or gross receipts is deemed to be the income chargeable under the head PGBP as against 8%. Such taxpayers are not required to maintain books of accounts and get the same audited. However, in case such taxpayer declares an income lower than deemed profits of 8% or 6%, as the case may be, of the total sales or gross receipts, such taxpayers are specifically required to maintain books of accounts and get the same audited under section 44AD of the Act. The proposed amendment that provides relief to taxpayers from getting their accounts audited if the receipts and payments in cash are within the specified limit of 5% does not provide any relief to such taxpayers having turnover of up to Rs. 2 crore to get the accounts audited if the profits declared by them is lower than 8% or 6%, as the case may be. Such taxpayers will still be required to get the accounts audited if they declare a profit less than 8% or 6% of the total turnover or the gross receipts. On the contrary, by virtue of the proposed amendment, a taxpayer whose turnover exceeds Rs. 2 crore but does not exceeds Rs. 5 crore may declare an income of less than 8% or 6% of its total sales or gross receipts and yet will not be required to get the accounts audited. Thus, such amendment results in an anomaly wherein the benefit of the proposed amendment will only be to the taxpayers having turnover between Rs. 2 crore - 5 crore whereas the taxpayers having turnover less than Rs. 2 crore will continue to be governed by the existing provisions.

2. Due date of filing return where audit is applicable being extended to 31st October

As per the existing provision of Explanation (2) to section 139(1), the due date for filing return in the case of a company, a person whose accounts are required to be audited and the working partner of the firm whose accounts are required to be audited is 30th September of the assessment year. The same has now been extended to 31st October of the assessment year. Further, the Finance Bill, 2020 proposes to provide that the due date in respect of a partner of the firm whose accounts are required to be audited shall be 31st October of the assessment year whether or not the partner is a working partner. Accordingly, the due date of partner of a firm irrespective of the fact whether such partner is working partner or not, in case the accounts of such firm are required to be audited shall be 31st October of the assessment year. It is to be noted that there is no change so far the due date of filing the return in the case of assessee who is required to furnish the return in respect of transfer pricing audit under section 92E of the Act. The due date in such cases shall continue to be 30th November of the assessment year. This amendment is being made from 1st April 2020 and hence, the same will be applicable from the assessment year 2020-21 i.e. financial year 2019-20.

3. Date of filing Audit Report delinked from date of filing return

The Finance Bill, 2020 has proposed to delink the date of filing audit report under various sections from the date of filing return. As per the amendment proposed, the Audit Report has to be filed one month before the due date of filing the return. At present, the due date of filing the return in the case where audit is required is 30th September. The due date of filing return has been extended to 31st October and accordingly, the due date for filing audit report under various sections shall be 30th September. Accordingly, the audit Report required to be filed under various sections such as section 10A, 80-1A, 80-1B, 80JJA, 12AB, 30(2AB), 33AB, 33ABA, 35D, 35E, 44AB, 44DA, 50B shall be required to be filed by 30th September of the assessment year. It is to be noted that due date of filing return where transfer pricing provisions are applicable has not been extended and the same continues to be 30th November of the assessment year. However, the transfer pricing audit report has to be filed one month before the due date of filing the return, accordingly, the audit report under Section 92E in respect of transfer pricing shall be required to be filing by 31st October. This amendment is being made from 1st April 2020 and hence, the same will be applicable from the assessment year 2020-21 i.e. financial year 2019-20.

4. Scope of e-assessment proceedings expanded to cover best judgment assessment under section 144

Vide Finance Act, 2018, sub-sections (3A) to (3C) to section 143 were inserted to empower the Central Government to issue a scheme for implementing faceless assessments. Under the existing provision of 143(3A), the Central Government is empowered to make the scheme in relation to regular assessments made under section 143(3) of the Act. The Finance Bill, 2020 proposes to expand the scope of such scheme to best judgment assessments made under section 144 of the Act. Further, the existing provisions required the Central Government to make the scheme on or before 31.03.2020. The Finance Bill, 2020 proposes to extend such sunset date from 31.03.2020 to 31.03.2022. This amendment will take effect from 1st April, 2020.

5. E-appeal and E-penalty

The Finance Bill, 2020 proposes to amend the existing provisions of section 250 by inserting sub-section (6A) to enable the Central Government to notify an e-appeal scheme for conducting the first appellate proceedings electronically without human interface. Such notification is required to be issued by the Central Government on or before 31.03.2022. Similarly, the Finance Bill, 2020 proposes to insert a new sub-section (2A) in section 274 to enable the Central Government to notify an e-penalty scheme for conducting the proceedings in relation to penalty electronically without human interface. Such notification is required to be issued by the Central Government on or before 31.03.2022 and every notification issued shall be required to be laid before each House of Parliament. These provisions are similar to the provision of section 143(3A) inserted vide the Finance Act, 2018 to empower the Government to notify an e-assessment scheme. The main object to notify e-appeal scheme is to eliminate interface between the CIT(A) or the assessing officer and the taxpayer. This amendment will take effect from 1st April, 2020.

J. TAX DEDUCTION AND COLLECTION AT SOURCE

1. Tax deduction at source (TDS) on dividend income on shares/units of mutual funds

The Finance Bill, 2020 has made amendment in Section 194 to provide that tax shall be required to be deducted at source at the rate of 10% in respect of the dividend to be paid or distributed by it. However, no tax shall be required to be deducted in case the aggregate of the amount of the dividend distributed or paid or likely to be distributed or paid to a shareholder who is an individual during the financial year does not exceed Rs.5,000/- and the payment is made by any mode other than cash.

Further, the Finance Bill, 2020 has proposed to insert a new Section 194K for making it obligatory to deduct tax at source at the rate of 10% on payment to a resident in respect of units of mutual fund. However, no tax shall be deducted in case the aggregate of the amount of such income credited or paid or likely to be credited or paid during the financial year to the payee does not exceed Rs.5,000.

It is to be noted that threshold of Rs.5,000/- for not deducting TDS in the case of dividend on share is only for a shareholder who is an individual and that too when payment is made by any mode other than cash. Thus, the TDS will be required to be deducted howsoever the small amount of dividend may be in case such payment is made to a person other than individual such as company, firm, LLP, AOP, HUF etc. The threshold of Rs.5,000/- for not deducting TDS on dividend income on units of mutual fund is for all assessee whether individual or any other status. Further, there is no such condition of payment being made by any mode other than cash. These amendments are consequential to shifting of taxation of dividend income in the hands of the recipient as against the existing provision wherein dividend distribution tax is deducted in the hands of the company/mutual fund.

It is to be noted that this provision of deduction of tax at source in respect of income of mutual fund shall be applicable where dividend is distributed by the mutual fund and not where units are purchased back by the mutual fund under growth scheme which are taxable under the provision of the capital gain. Further, it may be noted that the threshold of Rs.5,000/- is relevant only for the purpose of deduction of TDS. No deduction or exemption is provided in the hands of the shareholder or unit-holder in respect of the

dividend income. This amendment shall be effective from 01.04.2020 and as such tax shall be required to be deducted at source on dividend declared, distributed or paid on or after 01.04.2020.

2. Scope of TDS on interest being extended to certain Cooperative Societies

The scope of section 194A to deduct tax at source in respect of payment of interest is being widened in respect of the Cooperative Societies. If the total sales, gross receipt or turnover of the Cooperative Society exceeds Rs.50 crore during the financial year immediately preceding the financial year and the amount of interest to be credited or paid during the financial year is more than Rs.40,000 in the case of such cooperative society, the cooperative society shall be required to deduct tax at the rate of 10% in case the amount of interest credited or paid or likely to be credited or paid during the financial year is more than Rs.40,000. However, in the case of the senior citizen, the tax shall be required to be deducted at source in case this amount is more than Rs.50,000/-. This amendment shall be effective from 01.04.2020 and as such tax shall be required to be deducted under this provision from 01.04.2020.

3. Scope of Section 194C being widened in the case of contract manufacturing

As per existing section 194C, in the case of contract manufacturing, no tax is required to be deducted at source in respect of the job work in case the manufacturing is carried out by using material purchased from a person other than the person from whom such goods are being manufactured. However, in case such goods are manufacturing by using material purchased from the same person for whom the goods are being manufactured, then the tax is required to be deducted on the total amount including the amount of the goods supplied if the value of such material is not mentioned separately in the invoice. The Finance Bill, 2020 has proposed an amendment to the definition of the "work" to provide that contract manufacturing shall include material not only supplied by the customer but also its associate i.e. a person who is related to such person under the provision of Section 40A(2)(b) of the Act. Accordingly, in the case of contract manufacturing, where the material is supplied by the person for whom the manufacturing is carried out or by his associate i.e. a person related to such person, then tax shall be required to be deducted on the whole of the invoice value if the value of the material is not separately mentioned in the invoice. However, in case the value of the material is

separately mentioned in the invoice, then the TDS shall be required to be deducted on the invoice value excluding the value of the material. This amendment shall be effective from 01.04.2020 and as such tax shall be required to be deducted under this provision from 01.04.2020

4. Rate of TDS in respect of Fee for Technical Services (FTS) reduced to 2%

As per the existing provision of Section 194J of the Income Tax Act, tax is required to be deducted at source at the rate of 10% in respect of a payment to a resident by way of fees for professional services, fees for technical services, remuneration of a fee to a Director and royalty. The Finance Bill, 2020 has proposed to reduce the rate to 2% in respect of the payment to a resident for fee for technical services. This amendment is being proposed to avoid dispute which has arisen whether the services provided fall within the meaning of fee for technical services or within the meaning of works under Section 194C of the Act where tax rate applicable is 2%. There is no reduction in the tax rate applicable to fees for professional service. Considering the fact that the scope of “fees for professional services” and “fees for technical services” may overlap in case such services have been provided by an engineer or architect or technical consultant, dispute as to whether the tax rate applicable should be 2% or 10% will still continue. This amendment shall be effective from 01.04.2020 and as such, reduced rate shall be applicable from 01.04.2020.

5. Scope of TDS being widened in respect of payment by E-commerce company

The Finance Bill, 2020 has proposed to insert a new section 194-O extending the applicability of the TDS provision on participant to E-commerce. As per the proposed amendment, an E-commerce operator shall be required to deduct TDS at the rate of 1% at the time of credit of amount of sale or service or both to the account of the E-commerce participant or at the time of payment thereof to such participant by any mode, whichever is earlier. The amount shall include the payment directly made by the purchaser of the goods or services to the E-commerce participant. However, this provision shall not be applicable for E-commerce participant if the E-commerce participant happens to be an individual or HUF and the gross amount of sales or services or both of such individual or HUF through such E-commerce operator during the year does not exceed Rs.5 lakhs and such E-commerce participant furnishes a PAN or Aadhar Number. In case the E-commerce participant does not furnish PAN or Aadhar Number to the e-commerce operator, TDS shall be deducted at the rate of 5% under section 206AA of the Act.

Thus, in respect of all persons, other than Individuals or HUF's, selling goods or providing services through E-commerce operator such as Amazon, Swiggy, Filipkart, Uber, Walmart etc., tax shall be deducted by the E-commerce operator at the rate of 1% and there is no threshold exemption for non-deduction of TDS. However, in the case of Individuals or HUF's making sale through such e-commerce operators, tax shall be deducted by the e-commerce operator at the rate of 1% only if the total sales or services of such Individuals or HUF's through such e-commerce operators exceed Rs.5 lakh. It is to be noted that in case the sale amount exceeds Rs. 5 lakhs, then tax is required to be deducted under this provision on the entire amount and not only on the amount in excess of Rs. 5 lakhs. Further, it is to be noted that the amount on which tax shall be deducted shall also include payment directly made by a customer to such E-commerce participants.

In order to avoid duplicity, it has been provided that all transactions which are covered under this provision for tax deduction under such section 194-O, the same transaction shall not be liable for deduction of tax under other provisions of the TDS. Thus, in case any services or work is provided through the E-commerce operator by the participant which may otherwise liable for TDS under Section 194C in the case of work and Section 194J in respect of professional services etc. then, TDS will be required to be deducted under this provision at the rate of 1% and the provision of Section 194-C and Section 194-J shall not be applicable. This amendment shall be effective from 01.04.2020 and as such tax shall be required to be deducted under this provision from 01.04.2020

6. Tax Collection at source on overseas remittances under LRS

The Finance Bill, 2020 has widened the scope of tax collection at source by inserting a new sub-section (1G) in section 206C whereby, every person, being an authorized dealer, who receives an amount of Rs.7 lakh or more in a financial year for remittance out of India from a buyer under Liberalized Remittance Scheme of the RBI shall be required to collect tax at source at the rate of 5% at the time of debiting the amount to the buyers or at the time of receipt of such amount from the buyer by any mode whichever is earlier. In case of non-furnishing of PAN or Aadhar by such buyer, the tax shall be required to be deducted at 10% under section 206CC of the Act. It has been clarified that in case the nature of the payment is liable for deduction at collection at source or any other provision of the Act, then tax shall not be required to be collected at source on such payment.

This amendment will have far reaching implication as remittance being sent by all residents for the various purposes including education of children, medical treatment or investment otherwise shall be liable for tax collection at source. The objective for introducing this scheme apparently has been stated that many of such persons who send such remittances are not filing tax returns. In case this is one of the reasons, then the compliance of the same could have been easily achieved by widening the scope of Section 139(1) making it mandatory for such person to file tax return rather than collecting tax at source from such person. In case such person is not liable for tax, there is no reason why tax should be collected at source. This will not only increase the compliance burden of the authorized dealer and the remitter but also increase the paper work as many of these persons will be seeking certificate of no deduction or lower deduction under Section 197 or asking for refund of the tax so collected at source. This amendment shall be effective from 01.04.2020 and as such tax shall be required to be collected under this provision from 01.04.2020.

7. Tax Collection at Source on Overseas Tour Package

The Finance Bill, 2020 under the above new sub-section (1G) of section 206C has also proposed for collection of tax at source by the seller of overseas tour program package to collect tax at source at the rate of 5% at the time of debiting the amount to the purchase of the overseas tour program package or at the time of receipt of such amount, whichever is earlier, at the rate of 5%. In case of non-furnishing of PAN or Aadhar by such buyer, the tax shall be required to be deducted at 10% under section 206CC of the Act. It is to be noted that no threshold has been fixed in respect of overseas tour program package, meaning thereby that for every small payment made, the seller shall be required to collect tax at source. The scope of overseas tour program package is also very wide as its meaning has been defined to mean any tour program which offers visit to a country or territory outside India and include expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto. The above definition apparently mean that this provision shall be applicable not only when there is a package which include both travel and stay but will also be applicable when the payment is either for travel or stay or any other expenditure of any similar nature are incurred. Thus, apparently on purchase of ticket for overseas travel also, this provision will be applicable. However, it has been clarified that in case the nature of the payment is liable for deduction

at collection at source or any other provision of the Act, then tax shall not be required to be collected at source on such payment. Thus, while making payment to the tour operator, in case the tax is being deducted of the tour operator by the payee under Section 194C of the Act, then tour operator shall not be obliged to collect tax at source in respect of such payment. This amendment shall be effective from 01.04.2020 and as such tax shall be required to be collected under this provision from 01.04.2020.

8. Tax collection at source on sale of goods

The Finance Bill, 2020 has proposed a new sub-section (1H) under Section 206C requiring every seller whose total turnover in the business carried on exceed Rs.10 crore in the preceding financial year to collect tax at source at the rate of 0.1% of the sale consideration exceeding Rs.50 lakhs in respect of sale of any goods. Thus, under this provision, every seller whose turnover has been more than Rs.10 crore in the preceding year will be required to collect at source, from every buyer on purchase of goods by such buyer if the total purchases by such buyer exceeds Rs. 50 lakhs. It may be noted that the tax is required to be collected only in respect of the sale value exceeding Rs.50 lakhs during the year. In case such buyer does not have the PAN Number or Aadhar Number, then the rate of collection shall be 1% under Section 206CC of the Act. Further, the obligation to collect this TCS is on receipt of consideration for sale of any goods. Thus, the liability for depositing this TCS will be when the payment is received from the buyer. This provision thus is different than the other provisions of TDS and TCS whereby obligation of the deductor or the collector arises at the time of credit or debit or payment or receipt whichever is earlier.

This provision has far reaching implication as the scope is too wide and the magnitude of implication can be understood from the fact that business entities having turnover exceeding Rs.10 crore will be liable to collect tax at source from all the buyers whose purchases during the year is more than Rs.50 lakhs. This will mean that on each and every invoice, where the sale exceeds Rs.50 lakhs, there will be a separate charge of TCS from such buyer. The seller shall be required to maintain an account of the TCS collected, issue TCS certificate, file statement of such tax collected. The buyer on its own will be required to maintain the account of TCS paid by it, the credit of the same in the statement filed by the seller and claim of such TCS in the tax return. This procedure will be applicable for each and every invoice. It need to be emphasized that the volume of work and

compliance requirement will be more than the volume of work and compliance under GST which itself is finding difficult to cope with the volume of work. In the present case of TCS, the requirement will be on all goods whether the same are liable for GST or not. Take the case of a milk, vegetable, cereals traders/distributors. A local milk supplier will be buying its entire supply of milk from the vendor say Mother Diary. Its purchases in the year are bound to be more than Rs. 50 lakhs from Mother Diary and turnover of Mother Diary itself will be more than Rs. 10 crore. Now, under this proposed law, the Mother Diary on each invoice will be levying TCS at the rate of 0.1 %. Mother Diary will be required to issue TCS Certificate and such TCS credit will be reflected in 26AS. The number of entries for each person will run into hundreds and there will be requirement of reconciliation. Similar will be the case of other such products. Though in the proposed section, an enabling provision has been made to exempt certain categories but the fact remains that this will affect each and every person carrying on business. One need to consider that in many trades, there is only one supplier and the purchases from such supplier are far more than Rs. 50 lakhs.

The implication can be understood with another example of Oil Company like Indian Oil Corporation. With a turnover of about Rs.6 lakh crore, it will be collecting TCS from each of its distributor to whom it is supplying oil and the supply of the oil to each of its distributor will exceed Rs.50 lakhs. Then the distributor will further make the sale to the wholesaler. The distributor then will collect TCS from the whole seller and on each invoice, there will be a separate charge of TCS like GST. The wholesaler on its part will sell to the petrol pump dealer and in turn will levy TCS on each of the invoice raised on the petrol pump dealer. The purchase of each petrol dealer is more than Rs.50 lakhs. In this process, on each and every subject of the transaction, the TCS will get collected. This will have huge impact not only on the paper work compliance obligation but will also have serious impact on the working capital.

In many of the businesses, the margins are less than 0.1% and particularly in wholesale trading businesses, the margin is less than 0.1%. In these cases, the TCS collected may be more than the total income raising serious issue about the fund flow. The GST having been introduced and there being a complete trail available particularly in respect of the transaction which aggregates Rs.50 lakhs or more, there is no justification to introduce this provision so as to increase the compliance obligation on the trade which otherwise is finding difficult to cope with the compliance provisions under the GST Law. Contrary to

introducing such obligation, there is a need to consolidate the compliance under the various statute. The information available under one statute should be used in the other statute rather than asking that information again in the other statute. It will be ideal that tax returns under the various laws are integrated and businessman is required to submit one consolidated return rather than filing so many returns. It appears that while drafting this provision, one has not considered the volume of work and the manpower required for compliance of goods of such provision.

This amendment shall be effective from 01.04.2020 and as such tax shall be required to be collected under this provision from 01.04.2020

9. Individuals and HUF's to continue to deduct/collect tax at source in case turnover exceeds Rs. 1 crore in case of business despite increase in threshold of tax audit to Rs. 5 crore

The Finance Bill, 2020 has proposed to amend the provision of section 44AB to increase the threshold of turnover for requirement to get the accounts audited by persons engaged in businesses in case the aggregate receipts in cash does not exceed 5% of the total receipts and the aggregate payments in cash does not exceed 5 % of the total payments from Rs. 1 crore to 5 crore. Under the existing provisions, the threshold limits provided with reference to no requirement to deduct tax or collect tax at source by Individuals and HUF's under various TDS/TCS provisions are aligned with the monetary limits of total sales or gross receipts or turnover as per section 44AB of the Act which had the effect that an Individual or HUF was required to deduct or collect tax at source only if his turnover from business exceeded Rs. 1 crore and if his turnover from profession exceeded Rs. 50 lakhs. However, considering the fact that the threshold for getting the books of accounts audited under section 44AB for persons engaged in business in case the cash receipts and cash payments of such person is within the specified limit of 5 per cent, the monetary threshold reference to section 44AB contained in various TDS/TCS provision is proposed to be amended to cover cases where the turnover exceeds Rs. 1 crore under the ambit of TDS/TCS provisions. Accordingly, it has been proposed to amend the provision of section 194A, 194C, 194H, 194I, 194J and 206C to provide that Individuals or HUF's shall be required to deduct or collect tax at source if their turnover of sales or gross receipts exceed Rs. 1 crore in case of business and Rs. 50 lakhs in case of profession. Thus, while a taxpayer carrying on business may be eligible to not get the accounts audited if his

turnover exceeds Rs. 1 crore but does not exceed Rs. 5 crore in case the cash payments and cash receipts does not exceed the total payments and total receipts, as the case may be, however, such taxpayer carrying on business shall be required to comply with the various TDS/TCS provision once his turnover exceeds Rs. 1 crore. This amendment is being made from 1st April 2020 and hence, the same will be applicable from the assessment year 2020-21 i.e. financial year 2019-20.

K. PENALTY

1. Penalty for false or omitted entries found in books of accounts

The Finance Bill, 2020 has proposed a new section 271AAD for imposing a penalty for false entry/omitted entry in the books of accounts of the assessee. The proposed section provides that if it is found during any proceeding under the Act that in the books of accounts maintained by any person, there is a (i) false entry or (ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability, then such person shall be liable to pay by way of penalty, a sum which is equal to the aggregate amounts of such false entries or omitted entry. Further, it is also proposed to levy a penalty of the aggregate amounts of such false entries or omitted entry on any other person who causes the assessee in making the false entry or omits or causes to omit an entry. The term 'false entry' has been defined in an inclusive manner to include use or intention to use:

(a) forged or falsified documents such as a false invoice, or a false piece of documentary evidence, or

(b) invoice for supply or receipt of goods or services or both issued by or received by the assessee in respect of which no actual goods or services have been provided or received; or

(c) Invoice issued for supply of goods or services or both issued by or received from a non-existent person.

It may be noted that penalty can be imposed on both the person, i.e. the person in whose books of accounts it is found that there is a false entry or an omitted entry which has bearing on the total income of such person and any other person who causes the assessee in making the false entry or omits or causes to omit an entry. It is to be noted

that this penal provision is going to have far reaching impact. At present, in case of a dispute in respect of any purchases being bogus either corresponding sales are also to be considered bogus or a gross profit rate is to be applied considering the fact that in case sales are genuine then assessee would have made purchases if not from the person whose invoices recorded in the books are bogus from any other person. This is on the principle that under the Income Tax Act income has to be computed on real income theory. Now, in these cases the income will continue to be computed on real income theory but the assessee will be required to pay penalty at the rate of 100 per cent of the purchases which are found to be based on fake invoices. This penalty will be in addition to the tax and penalty which such an assessee will be required to pay on the basis of addition made in the income consequent to such bogus purchases recorded in the books. This penal provision is on the line of provision of section 269SS and 269T where there is a prohibition of taking or paying back any loan or deposit of Rs.20,000 or more otherwise than by account payee cheque and for default penalty equivalent to the amount of the loan or deposit is leviable under section 271D and 271E of the Act. These penal provisions were introduced way back in the year 1984 to address the issue of bogus loans shown to have been received in cash. The present provision in this Finance Bill, 2020 has been introduced to tackle the problem arising in Goods & Services Tax (GST) where the Government is finding it difficult to tackle the problem of bogus input credit on the basis of fake invoices.

The amendment is being made effective from 1st April 2020 and hence, the same will be applicable from assessment year 2020-21 onwards.

L. Vivad se Vishwas Scheme

The Direct Tax Vivad se Vishwas Bill, 2020 was laid down before the Parliament for resolution of pending tax disputes. Subsequently, there were a number of issues raised in relation to the said scheme. In view of these issues arising, the Direct Tax Vivad se Vishwas Bill, 2020 which was listed for passage in Lok Sabha on 11th February, 2020, the last day of the first phase of the budget session, was deferred. Thereafter, a note was circulated consequent to the amendment approved by the Parliament explaining the salient features of the Scheme. Now, the text of the amendments to the above Bill has been put in public domain. As per the amendment proposed, the definition of appellant

has been changed consequent to which eligibility criteria has been widened. Further, the definition of 'disputed tax' has also been changed which may have implication in determining the tax payable under the Scheme and may also lead to different interpretation.

Under the proposed Vivad se Vishwas Scheme, notwithstanding anything contained in Income Tax Act or any under law for the time being in force, a taxpayer is only required to pay the 'disputed tax' to be determined in accordance with the Scheme as a full and final settlement in respect of the tax arrear. The tax arrear includes the aggregate amount of the disputed tax, interest chargeable or charged on the disputed tax, and penalty leviable or levied on such disputed tax and also includes disputed interest, disputed penalty as well as disputed fee. The appeal in relation to the dispute shall be deemed to have been withdrawn and no further proceeding in respect of an offence shall be instituted nor any penalty as well interest shall be imposed or levied in respect of such tax arrear. The Salient features of the Scheme are as under:

1. All disputes pending before CIT(A), DRP, ITAT, High Court, Supreme Court on 31.01.2020 or where time to file an appeal has not expired on 31.01.2020 eligible for Scheme

The provisions of the Direct Tax Vivad se Vishwas Bill, 2020 shall be applicable to settle all disputes:

1. in respect of all the appeals/writ petition/special writ petition filed either by the taxpayers or by the Income Tax Authority or both and such appeal or petition is pending as on 31.01.2020 with the Commissioner (Appeals), Income tax Appellate Tribunal, High Court or Supreme Court;
2. Where Order has been passed by the Assessing Officer or CIT(A) or ITAT in appeal or High Court in a Writ Petition and for which time for filing any appeal or special leave petition against such order has not expired as on 31.01.2020.

   It is to be noted that in the proposed amendment order passed by High Court in a writ petition and where time for filing SLP has not expired has been included but order passed by High Court in an appeal is not stated. It appears to be an unintended omission in the drafting of the amendment. The order passed by High Court in appeal and for which time for filing SLP before Supreme Court has not expired should also be eligible under this Scheme.

3. Cases where objection has been filed before Dispute Resolution Panel (DRP) and the same is pending as on 31.01.2020;
4. Cases where DRP has issued direction but final Assessment Order has not been passed by the Assessing Officer on or before 31.01.2020;
5. Cases where assessee has filed application for revision under section 264 and such application is pending on or before 31.01.2020. It is to be noted that in respect of revision application the same should have been filed before the specified date 31.01.2020. The eligibility is where application for revision has been filed and does not cover cases where time period for filing revision petition has not expired. This extended period obviously has not been given considering the fact that the time for filing such revision petition is one year from the date of communication of the order.

It may be noted that all appeals/writs/ objections/ revision filed before CIT, CIT(A), DRP, ITAT, High Court or Supreme Court that are pending as on 31.01.2020 or all cases where the time limit to file an appeal has not expired as on 31.01.2020 will be eligible for the benefit of the Scheme. It may be relevant to mention here that an appeal before the CIT(A) against an assessment order is required to be filed within 30 days from the date of receipt of assessment order, an appeal before ITAT against the order of the CIT(A) is required to be filed within 60 days, an appeal before High Court against the order of the ITAT is required to be filed within 120 days and an appeal before Supreme Court against the order of the High Court is required to be filed within 90 days of the receipt of the order. Accordingly, such time frames may be considered by the taxpayer to determine its eligibility to fall under the scheme. Further, it may be noted that all disputes whether or not the demand has already been paid shall be eligible under the Scheme.

It is to be further noted that in the initial proposal, the appeal pending before CIT(A) and where notice of enhancement has been issued were excluded from the Scheme. Now, in the proposed amendment, it has been clarified that appeals pending with CIT(A) including where notice for enhancement has been issued before the specified date i.e. 31.01.2020 shall also be eligible and in the income for which notice for enhancement has been given will be considered as an addition to the income for the purpose of computing tax in dispute.

2. Scope of the Scheme

The benefit of the Vivad se Vishwas Scheme is available regardless of the nature of dispute. All disputes whether in relation to tax, interest, penalty, fee are covered under the Scheme. Under the Scheme, the disputes may broadly be categorized into four categories. First category covers the disputed tax and the interest and penalty in relation to such disputed tax. The other three categories covers disputed interest, disputed penalty and disputed fee where such disputed interest or penalty or fee are not connected with the disputed tax.

Under the first category that covers disputed tax, the main subject matter of dispute is the tax on income or TDS/TCS. Such dispute in relation to tax may arise on account of any addition or disallowance made vide an assessment order or a reassessment order. Such assessment order may be an order under section 143(3) or best judgment assessment order under section 144 or a final assessment order under section 144C(13) r.w.s. 143(3). Similarly, the reassessment order may be order under section 143(3) r.w.s. 147 or a best judgment assessment order under section 144 r.w.s. 147 or an order passed under section 144C(13) r.w.s. 143(3) r.w.s. 147. Further, dispute in relation to tax may be on account of a demand raised under section 200A on account of processing of statements of tax determined at source, demand raised under section 201 on account of non-deduction or short deduction of tax at source, demand under section 206C(6A) on account of non-collection or short collection of tax at source, demand under section 206CB on processing of statements of tax collected at source.

The other categories of disputes i.e. disputed interest, disputed penalty or disputed fees covers such cases where the subject matter of dispute pending as on 31.01.2020 is not related to dispute on account of tax. Such cases may be where dispute in respect of tax on income stands settled and the dispute i.e. appeal pending is on account of levy of penalty such as penalty under section 271(1)(c), 271AAA, 271AAB etc or appeal is pending on account of levy of interest or computation of interest levied. For instance, if no addition is made in the assessment order, however, interest is levied, say under section 234B, which has been challenged before the appellate forums, such a case may constitute a case of disputed interest as there is no dispute on account of tax.

Further, there may be cases where penalty or fees is subject matter of dispute i.e. appeal which is independent of the income such as fee levied under section 234E, 234G, penalty under section 271D, 271E, 271B etc. For instance, say a penalty order has been passed under section 271C for non-deduction of TDS, but there is no dispute pending for recovery of tax under section 201, the same may be considered to be a case of disputed penalty.

3. Cases in respect of which provision of the Direct Tax Vivad se Vishwas Bill, 2020 does not apply

It has been provided that the benefit of Direct Tax Vivad se Vishwas Bill, 2020 shall not be available in respect of the following cases/persons:

(i) Search cases where the order is passed under section 153A or section 153C including year of search where order has been passed under section 143(3) or 144, if the amount of disputed tax is more than Rs. 5 crore. It is to be noted that in the earlier proposal, all search and seizure assessments completed under section 153A and Section 153C were proposed to be not eligible for the scheme. Now, in the revised proposal, search assessment completed under Section 153A and Section 153C will also be eligible under this scheme with a condition that the disputed tax in such cases is less than Rs.5 crore in the relevant assessment year. This condition of Rs. 5 crore of disputed tax shall also apply to the search year where assessment is not completed under section 153A or 153C but under section 143(3) or 144.

This limit of Rs.5.00 crore of disputed tax is to be computed with reference to an assessment year and hence there is a possibility that an assessee may be eligible in one or more assessment year where disputed tax is less than Rs.5.00 crore and may not be eligible in other assessment year/years if the disputed tax is Rs.5.00 crore or more in those assessment years.

It is to be further noted that as per the definition of disputed tax proposed in the amendment, this amount of Rs.5 crore apparently will be the tax on the income determined by the Assessing Officer which may include income declared by the assessee in its return unless this definition of disputed tax is further amended. Thus, the eligibility in search cases will be where in any Assessment Year the tax payable on the income determined by the Assessing Officer is less than Rs.5 crore and

accordingly, there can be cases where the disputed income may be very small and the tax payable by the assessee on the returned income itself may be more than Rs. 5 crore and such assessee will not be eligible for the Scheme. This apparently is not intended by the Scheme. This issue is arising because of the revised definition of disputed tax in the proposed amendment as explained hereinafter under the head computation of disputed tax.

(ii) Cases relating to an assessment year in respect of which prosecution has been instituted under the Income-tax Act on or before the date of filing of declaration;

(iii) Cases relating to any undisclosed foreign income or assets;

(iv) Cases relating to an assessment or reassessment made on the basis of information received from foreign countries under Double Tax Avoidance Agreement or an agreement for exchange of information entered into with a foreign county;

(v) to any person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on or before the filing of declaration subject to specified exceptions;

(vi) to any person in respect of whom prosecution for any offence punishable under the provisions of the under Narcotic Drugs and Psychotropic Substances Act, Special Courts Act, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, the Prevention of Money Laundering Act, 2002 or the Prohibition of Benami Property Transactions Act, 2016 on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of these Acts.

(vii) to any person in respect of whom prosecution has been initiated by the Income Tax Authority for any offence punishable under the provision of the Indian Penal Code or for the purpose of enforcement of any civil liability under any law before the filing of declaration or such person has been convicted of any such offence consequent to the prosecution initiated by the Income Tax Authority.

Barring the above cases/persons, the provisions of the Bill are applicable to all the other cases that are eligible. It may be noted that the benefit of the Scheme will be available regardless of the nature of addition or disallowance made. The addition may be made

under section 68 on account of unexplained cash credit such as share capital, share application money, unsecured loan or under section 69 on account of unexplained investments or under section 69A on account of unexplained money or under section 69B on account of investments not fully disclosed in the accounts or under section 69C on account of unexplained expenditure, dispute on income claimed to be exempt such as capital gain on penny stock, long term vs short term, business income vs capital gain, exemption under any provision of the Act, etc. The nature of addition or disallowance made is immaterial for the purpose of the Scheme.

4. Declaration to be filed in respect of all issues in appeal

It may be noted that if there are more than one additions or disallowances involved in the appeal, the declarant would be required to file declaration for all additions as well as disallowances. He cannot file declaration for some additions or disallowances and litigate on the remaining issues.

5. Amount payable under the Declaration

As mentioned earlier, the dispute may either be on account of

(i) disputed tax or

(ii) disputed interest or

(iii) disputed penalty or

(iv) disputed fee

The criteria to determine the amount that is payable under the Scheme in respect of first category of dispute i.e. disputed tax and other category of disputes i.e. disputed interest or disputed penalty or disputed fees is different. Further, the criteria to determine the amount payable is prescribed with reference to the date on which the amount is paid i.e. whether the amount is paid before 01.04.2020 or after such date. Further, the criteria to determine the amount payable is also with reference to the fact whether the assessee is in appeal or the Department is in appeal. Similarly, the amount payable in search cases is higher. The amount that is payable under the Scheme having regard to the various criterion is summarized hereunder:

S. No	Type of case	Amount payable up to 31-03-2020	Amount payable on or after 01-04-2020
I. Cases relating to disputed tax, interest chargeable or charged and penalty levied or leviable on such disputed tax			
1.	If an appeal is filed by a **taxpayer**.	Amount of disputed tax.	Amount of disputed tax *plus* 10% of disputed tax
2.	If an appeal is filed by a **taxpayer**, in respect of tax arrear determined in any assessment on the basis of search under section 132/132A of the Act and the disputed tax does not exceed Rs. 5 crore.	Amount of disputed tax *plus* 25% of such disputed tax.	Amount of disputed tax *plus* 35% of such disputed tax.
3.	If an appeal is filed by a **taxpayer**, however, the issue is covered in favor of the taxpayer by a higher forum	50% of amount of disputed tax	50% of amount of disputed tax *plus* 5% of disputed tax
4.	If an appeal is filed by the **department**	50% of amount disputed tax	50% of amount of disputed tax *plus* 5% of disputed tax
5.	If an appeal is filed by the **Department**, in respect of tax arrear determined in any assessment on the basis of search under section 132/132A of the Act and the disputed tax does not exceed Rs. 5 crore.	50% of amount of disputed tax *plus* 12.5% of disputed tax	50% of amount of disputed tax *plus* 17.5% of disputed tax
II. Cases relating to disputed interest, disputed penalty and disputed fee			
1.	If an appeal is filed by the taxpayer	25% of disputed interest, penalty or fee	30% of disputed interest, penalty or fee
2.	If an appeal is filed by the department	12.5% of disputed interest, penalty or fee	15% of disputed interest, penalty or fee

As mentioned in the above table, it may be noted that if an appeal is filed by the taxpayer, then, in case the payment is made till 31st March, 2020, the declarant will need to pay:

(i) 100% of the disputed tax (125% of disputed tax in case of search cases) and the interest and penalty in relation to such tax whether charged/levied or chargeable/leviable shall be waived

(ii) 25% of the disputed penalty, interest or fee in case dispute relates to disputed penalty, interest or fee and the balance 75% shall be waived.

However, in case the payment is not made till 31st March, 2020, Declarant will need to pay-

(i) 110% of the disputed tax (135% of disputed tax in case of search cases) and the interest and penalty in relation to such tax whether charged/levied or chargeable/leviable shall be waived

(ii) 30% of the disputed penalty, interest or fee in case dispute relates to disputed penalty, interest or fee and the balance 70% shall be waived.

Further, it may be noted that if the appeal or the writ petition or special leave petition is filed by the Department or the department has lost on any issue or in a case where the appeal is filed by taxpayer, however, the issue is covered in favor of the taxpayer by a higher forum, then, in case payment is made till 31st March, 2020, the declarant will need to pay-

(i) 50% of the disputed tax (62.5% of disputed tax in case of search cases) and the interest and penalty in relation to such tax whether charged/levied or chargeable/leviable shall be waived

(ii) 12.5% of the disputed penalty, interest or fee in case of appeals related to disputed penalty, interest or fee and the balance 87.5% shall be waived

However, in case payment the is made after 31st March, 2020, the Declarant will need to pay-

(i) 55% of the disputed tax (67.5% of disputed tax in case of search cases) and the interest and penalty in relation to such tax whether charged/levied or chargeable/leviable shall be waived

(ii) 15% of the disputed penalty, interest or fee in case of appeals related to disputed penalty, interest or fee only and the balance 85% shall be waived.

It may be relevant to point out that in case there are more than one issue or addition in respect of which the assessee is in appeal and one of the addition is covered in favor of the assessee by the higher forum, then the benefit of the payment of tax at half the normal rates prescribed shall be only available in respect of such issue which is covered in favor

of the assessee and not all the issues. Similarly, in case the appeal on one issue is decided by the appellate authority in favor of the assessee whereas the appeal on some other issue forming part of the said order is decided by the appellate forum in favor of the Department, then in case both the assessee and department files an appeal, the assessee shall be eligible for the benefit of making payment at half the normal rates only in respect of the Department appeal and in respect of appeal filed by him. Further, it is to be noted that in the cases relating to disputed tax and interest and penalty in relation to such disputed tax, in case the payment is made after 31.03.2020 then the excess payment required to the extent of 25% or 35% or 17.5% or 12.5% or 10% or 5% of disputed tax, as the case may be, exceeds the total of interest and penalty, such excess amount is to be ignored while computing the amount payable under the declaration.

Further, it is important to note that as per the proposed amendment, in a case where an appeal or writ petition has been decided in favor of the assessee or department and the time for filing appeal or special leave petition against such order by the assessee or the Department has not expired, the disputed tax shall be the amount of tax payable by the assessee on the income after giving effect to the order so passed by the appellate forum. It may be pertinent to highlight here that in case an appeal has been decided in favor of the assessee and the time limit to file the appeal by the Department is pending on 31.01.2020, in view of such amended definition of disputed tax, the disputed tax will be Nil. Further, since the amount payable under the Scheme is computed as a percentage of disputed tax, the same will also be Nil. This apparently is distinct to the proviso to section 3 whereby if an appeal has been filed by the Department, then on that issue, 50 per cent of the tax shall be payable. However, in case an issue has been decided in favor of the assessee and time for filing appeal by Department has not expired, then, no tax may be payable in respect of such issue which has been decided in favor of the assessee despite Department having time to file the appeal. Accordingly, where CIT(A) has decided any appeal between 1st December 2019 – 31st January 2020 and where ITAT has decided any appeal between 1st November, 2019 – 31 January 2020, and where High Court has decided any appeal between 1st October 2019 – 31 January 2020, there is a possibility that Department would not have filed appeal before higher forum in view of the time period provided to file such appeal. In such cases, the assessee shall be in a position to file declaration and put an end to the Vivad without requiring to make any payment in respect of the issue which has been decided in his favor and Department still had got a right to file appeal.

6. Computation of disputed tax for payment under declaration

As noted above, the payment to be made under the Scheme is computed with reference to disputed tax. Accordingly, it may be relevant to understand the meaning of such term. "Disputed tax" is the amount of tax that would have been payable if the appeal were to be decided against the assessee. It has been provided that the Disputed tax in relation to an assessment year shall be the amount of tax means the income tax including surcharge and cess that is payable by the appellant as computed hereunder:

(i) In case where appeal, writ or special leave petition is pending before the appellate forum as on 31.01.2020, the income tax including surcharge and cess that is payable by the appellant if such appeal is to be decided against him;

(ii) in a case where an order in an appeal or in writ petition has been passed by the appellate forum, and the time for filing appeal or special leave petition against such order has not expired as on 31.01.2020, the income tax including surcharge and cess payable by the appellant after giving effect to the order so passed;

(iii) in a case where the order has been passed by the Assessing Officer and the time for filing appeal against such order has not expired as on 31.01.2020, the income tax including surcharge and cess payable by the appellant in accordance with such order;

(iv) in a case where objection filed by the appellant is pending before the Dispute Resolution Panel under section 144C of the Income-tax Act as on 31.01.2020, the income tax including surcharge and cess payable by the appellant if the Dispute Resolution Panel was to confirm the variation proposed in the draft order;

(v) in a case where Dispute Resolution Panel has issued any direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed the final assessment order under sub-section (13) of that section on or before the 31.01.2020, the income tax including surcharge and cess payable by the appellant as per the final assessment order to be passed by the Assessing Officer under sub-section (13) thereof;

(vi) in a case where an application for revision under section 264 of the Income-tax Act is pending as on 31.01.2020, the amount of tax payable by the appellant if such application for revision was not to be accepted.

Further, it has been provided that where the Commissioner (Appeals) have issued a notice of enhancement under section 251 of the Act, the disputed tax amount will be increased by the amount of tax pertaining to the issues for which the notice of enhancement has been issued.

Further, the definition provides that where disputes in relation to any assessment year relates to reduction of tax credit of MAT under section 115JAA or reduction of tax credit of AMT under section 115D or reduction of any loss or depreciation, the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation in the manner as may be prescribed.

Confusion in the definition of the term "Disputed Tax"

It is to be noted that in the original proposal, this disputed tax was to be determined by considering the following formula:

(A-B)+(C-D), where

A = the amount of tax on the total income assessed under the normal computation provisions;

B = amount of tax that would have been chargeable had the total income assessed under the normal provisions been reduced by the amount of income in respect of which appeal is filed by the assessee;

C = amount of tax on the total income assessed under the provisions of MAT contained in section 115JB or AMT contained in section 115JC;

D = amount of tax that would have been chargeable had the total income assessed under the provision of MAT or AMT been reduced by the amount of income in respect of which appeal is filed by the assessee

Thus, under the original proposal, the disputed tax was to be computed on the basis of the tax on the income determined minus tax on the income after reducing such income by the income which is in dispute. Now, in the amended proposal, where any appeal is pending before the appellate forum as on 31.01.2020, disputed tax will be the income tax including surcharge and cess that is payable by the appellant if the appeal was to be decided against him. It may be relevant to point out that the language of 'disputed tax' is

ambiguous and there may be three possible ways to interpret such amended definition. Under the first interpretation, a view may be taken that the amount of tax that is payable if the appeal was to be decided against the assessee will the amount of tax on the total assessed income. Under the second interpretation, a view may be taken that the amount of tax that is payable if the appeal was to be decided against the assessee will be the difference between the tax on assessed income and tax on returned income. Under the third interpretation, a view may be taken that the amount of tax that is payable if the appeal was to be decided against the assessee will be the difference between the amount of tax on assessed income and the aggregate of the amount of tax on returned income and tax on income not in dispute i.e. tax on addition made which are not challenged by the assessee. Now, under the Scheme, upon payment of disputed tax, assessee is entitled to waiver of interest on such disputed tax. Accordingly, under the first two interpretations, the assessee may be entitled to waiver of interest on returned income and/or interest on income not in dispute as well. This apparently is not the intention of the Scheme.

This can be understood with a simple example as per detailed computation given in the table below:

Assessee 'A', an individual resident , AY 2015-16			
Particulars	**Computation**	**Rupees**	**Rupees**
Returned income filed on 15.02.2016	A		14,500,000
Tax (including surcharge and cess) on returned income	B		4,730,275
Interest under section 234A, 234B and 234C	C		340,863
Total tax and interest paid by the assessee	D=B+C		5,071,138
Additions made by AO vide order dated 28.12.2017	E		77,800,000
1. on account of disallowance of commission		8,000,000	
2. on account of unexplained credit		50,000,000	
3. on account of low GP rate		18,000,000	
4. on account of adhoc disallowance of expenses		1,800,000	
Assessed income vide order dated 28.12.2017	F=A+E		92,300,000
Tax (including surcharge and cess) on assessed income	G		31,174,495
Total interest under section 234A, 234B and 234C on assessed income	H		7,745,245

Demand payable vide notice of demand dated 28.12.2017	I=G+H-D		33,848,602
Scenario: **Appeal filed on 20.01.2018 before CIT(A) - only 1st, 2nd and 3rd addition challenged and the appeal is pending before CIT(A) as on 31.01.2020**			
Tax on income not disputed before CIT(A)	J= Tax on 18,00,000		611,820
Tax on income in dispute before CIT(A)	K=G-B-J		25,832,400
Disputed tax as per amended definition in section 2(j)(A):			
(i) First interpretation: Disputed tax is the difference between tax on assessed income and the aggregate of tax and interest paid by the assessee on its retuned income	L = G-D		26,103,357
(ii) Second interpretation: Disputed tax is the difference between tax on assessed income and tax on returned income	M = G-B		26,444,220
(iii) Third interpretation: Disputed tax is the difference between tax on assessed income and the aggregate of tax on returned income and tax on income not disputed i.e. Rs. 6,11,820 plus interest upto date of payment of such tax	N = G-(B+J)		Disputed tax: 25,832,400 + tax on admitted income i.e. (Rs. 6,11,820 plus interest on Rs. 6,11,820)

As per table given above, an individual assessee say has declared an income of Rs.1,45,00,000 in the return for the Assessment Year 2015-16 filed on 15.02.2016. The tax (including surcharge and cess) payable on such income of Rs. 1,45,00,000 was Rs. 47,30,275. The said individual had made payment of advance tax of Rs. 9,00,000 on 15.09.2014, Rs. 9,00,000 on 15.12.2014 and Rs. 12,00,000 on 15.03.2015. The total interest under section 234A, 234B and 234C was computed at Rs. 3,40,863. Accordingly, the aggregate of the total tax and interest payable was computed at Rs. 50,71,138 (47,30,275/- + Rs. 3,40,863). The individual deposited self-assessment tax under section 140A of Rs. 20,71,138 on 15.02.2016.

Now, say the case of the assessee was selected for regular scrutiny assessment and the assessment was framed at an a income of Rs. 9,23,00,000 by the assessing officer under section 143(3) of the Act vide order dated 28.12.2017 whereby total addition of Rs. 7,78,00,000 was made. Out of such total addition of Rs. 7,78,00,000/-, say Rs. 80,00,000

is on account of disallowance of commission, Rs. 5,00,00,000 is on account of unexplained cash credit such as share capital/unsecured loan, Rs.1,80,00,000 is on account of low GP rate and Rs. 18,00,000 is on account of adhoc disallowance of expenses. The total liability on account of tax (including surcharge and cess) on income assessed of Rs. 9,23,00,000 was computed at Rs. 3,11,74,495. Further, total liability on account of interest under section 234A, 234B and 234C was computed at Rs. 77,45,245. Out of the total tax determined on assessed income of Rs. 3,11,74,495, Rs. 47,30,275 stands already paid earlier by way of advance tax and self assessment tax and Rs. 2,64,44,220 is required to be paid by the assessee. Similarly, out of the total interest of Rs. 77,45,245, Rs. 340,863/- stands already paid vide installment for self-assessment tax and Rs. 7,404,382 is required to be paid.

Now, let’s assume that the assessee challenged only the addition on account of disallowance of commission of Rs. 80,00,000, addition on account of unexplained cash credit of Rs. 5,00,00,000 and the addition on account of low GP rate of Rs. 1,80,00,000 before the CIT(A) by filing an appeal on 20.01.2018. However, the assessee does not challenge that addition on account of ad-hoc disallowance of expenses to the tune of Rs. 18,00,000/-. In such a case, disputed tax is to be computed in accordance with the amended definition of disputed tax provided under section 2(j)(A). As per the amended definition, where any appeal is pending before the appellate forum as on 31.01.2020, the income tax including surcharge and cess that is payable by the appellant if the appeal was to be decided against him will be the disputed tax. As mentioned earlier, there could be three possible interpretation with regard to ‘disputed tax’.

The first interpretation will be that the amount that is payable by the appellant if the appeal was to be decided against him will be Rs. 3,11,74,495 and against this, a sum of Rs. 50,71,138 has already been paid. Thus, the balance tax payable apparently will be Rs. 2,61,03,357/-. This way, the taxpayer get advantage/waiver not only of the interest on the disputed income but also on the returned income which apparently is not the intention of the Scheme.

The second alternative can be that the disputed tax is worked out by deducting the tax on the assessed income i.e. Rs. 3,11,74,495/- minus tax on the returned income i.e. Rs. 47,30,275 i.e. Rs. 2,64,44,220. This way also, the taxpayer get the advantage/waiver of

interest on addition not in dispute i.e. not raised in the grounds of appeal. This apparently also is not the intention of the Scheme.

The third alternative can be that tax on assessed income i.e. Rs. 3,11,74,495/- minus aggregate of tax on returned income and tax on addition not in dispute i.e. Rs. 53,42,095 will be the disputed tax i.e. Rs 2,58,32,400 and the tax payer will be required to pay tax of Rs. 6,11,820 and also applicable interest upto the date of the payment of such tax as there will be no waiver in respect of such admitted income which is not in dispute. In this alternative, the taxpayer will get waiver of interest only on such part of the income which is in dispute and subject matter of appeal. This apparently is the objective of the Scheme.

Thus, in view of the above analysis, it is important that the definition of disputed tax be further amended so as to clarify the exact objective and avoid any further confusion. In the original proposal, the disputed tax was to be computed on the basis of the tax on the income determined minus tax on the income after reducing such income by the income which is in dispute. This formula was a correct formula for arriving at the correct amount of disputed tax.

7. Procedure to file declaration

The procedure for filing of declaration and making the payment under the scheme is as under:

(i) Filing of declaration

A declaration is required to be filed in accordance with the provision of section 4 of the Direct Tax Vivad se Vishwas Bill, 2020. The declaration will have to be filed in the manner to be prescribed before the designated authority. Designated authority has been defined to mean an officer not below the rank of a Commissioner of Income-tax notified by the Principal Chief Commissioner for the purposes of Direct Tax Vivad se Vishwas Act.

(ii) Order to be passed determining the amount payable under the Act and certificate to be issued

Upon filing of the declaration by the declarant, the Commissioner shall within a period of 15 days from the date of receipt of the declaration, determine the amount payable by the declaration in accordance with the provision of the Act by an order under

section 5(1) and grant a certificate under section 5(1) to the declarant in the prescribed form contacting particulars of the tax arrears and the amount payable after determination of the same.

(iii) Deemed withdrawal of appeal before CIT(A) and ITAT

As per provision of section 4(2), consequent to the filing of declaration and the issuance of certificate by the designated authority, appeals of taxpayers and department in respect of the disputed income, disputed interest or disputed penalty or disputed fee pending before the Commissioner (Appeals) or ITAT shall be deemed to have been withdrawn. This deemed withdrawal of appeal is in respect of appeals before CIT(A) and ITAT and hence, there will be no need to file any application for withdrawal of appeals before CIT(A) and ITAT. However, in respect of appeals before High Court and Supreme Court, the same can be withdrawn only with the permission of the Court under the rules of the respective Courts. Accordingly, there is no such provision of deemed withdrawal. In such appeals before High Court or Supreme Court, appropriate application will be required to be filed seeking withdrawal of the appeal.

(iv) Payment of amount within 15 days of the receipt of the order

The declarant is required to pay the amount determined as specified in the Certificate within 15 days of the date of the receipt of the certificate and intimate the details of such payment to the designated authority in the prescribed form. In case the declarant has already made payment before filing of declaration, the excess amount paid by him shall be refunded.

(v) Proof of withdrawal of appeal before High Court or Supreme Court also within 15 days of receipt of order

As per the amended provision, in case a declarant has filed an appeal or petition before the appellate forum being High Court or Supreme Court, he is required to withdraw such appeal/petition and furnish proof of such withdrawal along with the intimation of payment. The declarant also needs to withdraw the proceedings, if any, initiated by him for arbitration, conciliation or mediation and furnish the proof of such withdrawal along with the intimation of payment.

In the original proposal, the declarant was required to withdraw such appeal/petition or arbitration or conciliation and mediation prior to the furnishing of the declaration and furnish proof of the same along with the declaration. However, under the amended proposal, such proof is required to be submitted along with the intimation of the payment. It may be noted that the payment is required to be made with 15 days from the date of receipt of the certificate issued by the designated authority. Accordingly, there may be a practical challenge for the declarant to withdraw such appeal and have the order of withdrawal in hand within such period of 15 days so as to be able to furnish the proof of the same along with the payment intimation. It may so happen the order of dismissal of the appeal as withdrawn is served after the period of such 15 days. Similarly, it may take more than 15 days for the procedure to withdraw from the arbitration proceedings to complete. In such circumstances, such condition to furnish the proof of withdrawal along with the intimation may cause hardship and accordingly, submission of the proof of payment of disputed tax and proof of withdrawal of appeal need to be delinked. The proof of payment of disputed tax can be filed within 15 days and proof of withdrawal should be allowed to be filed within 15 days from the date of the order by the appellate forum allowing such withdrawal.

It may be relevant to point out that there is no requirement to withdraw the appeal pending before CIT(A) or ITAT prior to the declaration as the same shall be deemed to be withdrawn upon fulfilment of the procedure.

(vi) Declarant to submit an undertaking

Further, the declarant is also required to furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax arrears. Such undertaking shall be made in such form and manner as may be prescribed. It is to be noted that the taxpayer will not be eligible to pursue any remedy or make any claim subsequently in respect of the tax arrears in respect of which the declaration is filed.

(vii) Designated authority to pass an order upon receipt of intimation of payment

Upon receipt of the intimation of payment, the designated authority shall pass an appropriate order under section 5(3) stating that the declarant has paid the amount.

No time limit has been prescribed for the designated authority to pass such an order to the effect that the declarant has paid the amount.

8. Immunity from prosecution, levy of penalty and charging of interest

As per the provision of section 6, immunity will be granted from institution of any proceeding for prosecution for any offence under the Income-tax Act in respect of matters covered in the declaration. Further, the immunity will also be provided from imposition of penalty and levy of interest in respect of such matters. The amount paid under the Scheme shall be full and final settlement in respect of such matter and shall be conclusive as to the matters stated in the Declaration and no matter covered by such certificate shall be reopened in any other proceeding under the Act or any other law for the time being in force. Further, it may be noted that filing of the declaration will not set any precedence and neither the Department nor the declarant can claim in any other proceedings that the taxpayer or the Department has conceded its tax position by settling the dispute.

9. Declaration deemed to have never been made in few cases

The declaration furnished by the declarant shall be presumed never to have been made if any material particular furnished in the declaration is found to be false at any stage; the declarant violates any of the conditions referred to in Direct Tax Vivad se Vishwas Bill, 2020; or the declarant acts in any manner which is not in accordance with the undertaking given by him along with the declaration. In such cases where it is presumed that the declaration was never made, all the proceedings and claims which were withdrawn under section 4 and all the consequences under the Income-tax Act against the declarant shall be deemed to have been revived.

10. Amount paid in pursuance of a declaration shall be non-refundable

As per the provision of section 7, any amount paid in pursuance of a declaration made shall not be refundable under any circumstances. It may be noted that in case the declaration is held to be invalid for one reason or the other, not only the proceedings dropped will stand revived but the amount paid in pursuance of the declaration shall also be non-refundable.

11. However, excess amount paid prior to date of declaration, if any, shall be refundable

As per the Explanation proposed to be inserted in section 7, if the amount paid by declarant before filing declaration exceeds the amount payable under the Scheme, the

declarant would be granted the refund for such excess amount. However, interest under section 244A will not be granted on such refund.

12. Secondary adjustment shall be required in pursuance to the settlement of disputes

It is proposed to be provided that the settling of disputes regarding transfer pricing adjustment would not have any effect on the secondary adjustment, both being independent provisions, and the taxpayer would be required to repatriate fund to India in respect of settled transfer pricing adjustment.

13. Issues which needs further consideration

The amended Vivad se Vishwas scheme has addressed many of the issues that emanated from the Scheme presented initially. However, the Scheme has still not addressed few other issue i.e dispute at AO's level and dispute which assessee believes may arise in future, exclusion of disputes set asided by ITAT/ High Court or Supreme Court, exclusion of cases of revision under section 263. The same are discussed hereunder:

a. Exclusion of cases pending before assessing officer or where similar disputes are likely to arise in future

Only those cases where appeals are pending before the appellate forums have been covered. Disputes that are pending with the assessing officer have not been covered in the scheme. Exclusion of such cases and not giving an option to settle disputes which are before assessing officer doesn't appear to be a good idea. Ideally, when settlement of disputes is the objective, the scheme should have been extended to cover all disputes and also such disputes that are likely to occur. There is a possibility that in one year, the dispute has reached to appeal level, and similar issue in next year is at assessing officer's level and further similar dispute will come up in subsequent year because of stand taken by the assessing officer in the earlier year for which appeal is pending. If one goes for this scheme, he will only be able to settle such years for which the appeal is pending. However, similar issues which in all likelihood will come up in future because of the stand taken by the assessing officer in earlier year will remain pending and entail unnecessary litigation in subsequent years. Ideally, option should have been given to settle all disputes now only where the appeals are pending but also where assessee visualises such dispute in subsequent years. This

would have not only encouraged people to come out clean once and for all and avoid unnecessary litigation in the future on similar issues but also a big Revenue collection. Voluntary compliance considering dispute may arise will be far more effective as against later on enforcement mechanism which may be able to identify only a few cases and take action and ultimate recover taxes. The number of cases coming up voluntarily and tax so recovered will be much higher. This will also ensure reduced litigation in future as well. It may be relevant to point out that in the Sabka Saath Sabka Vishwas Scheme of Indirect taxes, there was an option to the declarant to pay taxes in respect of anticipated disputes and one of the reason for the success of this Scheme was resolution of anticipated disputes. Accordingly, the scope of Vivad se Vishwas Scheme needs to be expanded so as to include declaration in respect of anticipated disputes in respect of the returns already filed by the taxpayer. In such cases, the declarant will clearly state the issue and the amount involved and pay taxes thereon. In case of any dispute arising in future, the declarant will get immunity in respect of the issue and to the extent of the amount stated in the Declaration. This will encourage many taxpayers to settle anticipated disputes and will ensure that the number of disputes in the coming years also do not rise much. This enabling provision may itself bring additional revenue of at least Rs. 100,000 crore which otherwise may be difficult to realize despite best of enforcement mechanism provided in the Act.

b. Cases set aside by ITAT, High Court or Supreme Court

In the revised scheme, orders for which, time for filing appeal has not expired as on 31st January, 2020 has been included. However, those disputes which have travelled to an Appellate Forum earlier and has been set aside by the Appellate Forum to the Assessing Officer for one reason or the other have not been included. Similarly, there may be cases where assessment orders have been set aside by the Commissioner invoking its powers of revision under Section 263 of the Act. A dispute having arisen and the same being the subject matter of the appeal, set asiding of the same to the AO is a continuing process of appeal. The objective of the scheme is to put an end to the litigation. Accordingly, such cases which have been set aside by the Appellate Forum to the AO need to be included in the scheme. It may be important to point out that these cases will be older than the ordinary appeals having travelled at least once to the Appellate Forum and being back to the AO. This will help in putting quietus to the old litigations.

c. Need to consider tax rate applicable for dispute on income liable for tax under section 115BBE of the Act

The Taxation Laws (Second Amendment) Act, 2016, has amended the provision of section 115BBE increasing the tax rates applicable on the income in respect of cash credits i.e. unexplained share capital, loan and unexplained investment in money, bullion, jewelry, etc. to 60%. Further, the Finance Act has provided surcharge applicable on such income at the rate of 25% of the tax and cess at the rate of 4% with the result the effective tax rate on such income is 78% from assessment year 2017-18 onwards. A large number of disputes has arisen and are pending in appeals on the issue whether the additions made are justified or not and further, such additions falls within the meaning of income stated in this section 115BBE so as to be liable for higher rate of tax i.e. 78% In order to encourage settlement of such disputes, it is imperative that the tax rate is commensurate and at par with the tax rate applicable on other income. As per the Scheme, in the ordinary case, howsoever grave the case may be, the assessee is required to pay only tax and on payment of such tax, the interest and penalty get waived off. In this rate of 78%, the element of penalty is already included as penalty in such cases is limited to 10% of the income in dispute as against 30% to 90% of the income in the other cases. When this penalty of 30% to 90% is being waived, there is justification that the penalty component included in the tax rate of 78% in section 115BBE be also reduced appropriately. Thus, in the case of the income in dispute on which tax rate has been applied under section 115BBE, instead of asking 100% of the tax, 50% of the tax may be asked for settlement of the dispute under this Scheme. This will be in line with the proposed Scheme where a higher rate of 125% of tax has been proposed in search cases and lower rate of 50% has been proposed in the case where Department is in appeal. Further, this will also remove discrimination of different tax rates on similar nature of income. The addition in dispute in respect of unexplained cash credit/investment for AY 2016-17 and earlier years can be settled by paying 30% tax whereas the similar addition for AY 2017-18 onwards have to be settled by paying tax at the rate of 75%. It may also be relevant to point out that this amendment was made on 16.12.2016 i.e. when 9 months of the year had already passed. This reduction in the tax rate will go a long way in settling dispute in appeals which have come in large numbers in January 2020 itself and revenue collection on this account itself will at least be 25,000 crore.

d. Additional tax post 31.03.2020 need to have nexus with the disputed tax in arrears

As per the proposed Scheme, disputed tax at the rate of 100% is required in case payment is made on or before 31.03.2020. Similarly, penalty or fee at the rate of 25% is required to be paid before 31.03.2020. However, in case payment is not made by 31.03.2020, then, tax at the rate of 110% and penalty at the rate of 30% is required to be paid. The difference in payment of tax is of 10% and that of penalty is 20%. This provision does not take into account the tax already paid by the taxpayers. The requirement of paying additional tax of 10% should be limited to the amount of disputed tax in arrears as on 31.03.2020 rather than on the total disputed tax. There is a possibility that in the case of a declarant, the total disputed tax may be Rs. 200 lakhs and out of which, Rs. 190 lakhs would have been recovered and the balance tax payable may be only Rs. 10 lakhs as per the Scheme. In the case of such person, if a declaration is filed and payment is made by 31.03.2020, he will be required to pay just Rs. 10 lakhs. But in case, the declaration is filed after 31.03.2020, then such person will be required to pay Rs. 30 lakhs i.e. 110% of disputed tax of Rs. 200 lakhs which comes to Rs. 220 lakhs minus Rs. 190 lakhs already paid. Considering this fact, this additional tax of 10% be limited to disputed tax in arrear as on 31.03.2020 rather than the total disputed tax. Similarly, in the case of penalty, the additional liability should be restricted to 10% of 25% and not 20% of 25% to make the Scheme fair and equitable.

M. MISCELLANEOUS

1. Annual Information Statement to be issued by the Department in place of Form 26AS

As per the existing provision of section 203AA, the Department is required to prepare and deliver a statement in Form 26AS which contains details of tax deducted at source, tax collected at source, advance tax and self-assessment tax. It is proposed to widen the scope of the details that are to be captured in the statement to be delivered by the Department to information in respect of a person such as sale/purchase of immovable property, share transactions etc. so as to facilitate compliance and so that the same can be used by the assessee for filing of the return of income and calculating his correct tax liability. Accordingly, it is proposed to remove section 203AA and insert a new section

285BB to provide that the Department shall upload an annual information statement in the prescribed form and manner and within prescribed timelines containing such information as may be prescribed on the e-proceedings portal. This amendment shall be effective from 1st June, 2020.

2. Prior approval of Commissioner or Director of Income Tax now required in place of Joint Commissioner or Joint Director to undertake survey under section 133A in absence of any information

Section 133A of the Act empowers an income-tax authority to conduct survey at the business premises of the assessee within his jurisdiction. However, as per the proviso to sub-section (6) of the said section 133A, an income-tax authority below the rank of Joint Director or Joint Commissioner can conduct a survey only with the prior approval of the Joint Director or the Joint Commissioner. The Finance Bill, 2020 proposes to provide safeguard to the assessee against possible mis-utilization of powers by the Joint Commissioner or Joint Director by substituting the existing proviso to section 133A(6) to provide that an income tax authority below the rank of Commissioner or Director shall now be required to obtain prior approval from the Commissioner or Director before conducting any survey. However, it is proposed to provide that in case the income tax authority receives any information from an authority, as will be prescribed, then the prior approval of Joint Commissioner or Joint Director shall be required in place of Commissioner or Director. The implications of this amendment will be that the authority from whom prior approval is to be taken by the assessing officer before conducting any survey will be dependent on the fact whether any "information" has been received by the assessing officer from the prescribed authority. In case "information" is received, then prior approval of Joint Commissioner or Joint Director shall be required to conduct a survey. However, in case no information is received, then prior approval of Commissioner or Director will be required to conduct any survey. Under the proposed amendment, there may be disputes as to what constitutes "information". "Information" must be specific, definite and authentic and it shouldn't just be a rumor or gossip. However, department may contest to the contrary. This amendment will take effect from 1st April 2020 i.e. approval of prior approval of Commissioner or Director shall be required in respect of survey to be undertaken on or after 1st April 2020 in case no information is received by the assessing officer.

3. Scope of deductions prohibited being widened to cover entire Chapter VI-A deductions to corporates that opts for concessional tax rates under section 115BAA or 115BAB

The Taxation Laws (Amendment) Act inserted section 115BAA and section 115BAB to provide an option for domestic companies to opt to pay tax at concessional rate provided such companies do not opt to avail any deduction and incentives as specified. Deductions under Chapter VI-A under the heading "C. Deduction in respect of certain incomes" other than the provision of section 80JJAA is prohibited if a company opts to pay tax under section 115BAA or section 115BAB. The Finance Bill, 2020 proposes to amend the provisions of section 115BAA and section 115BAB to not allow deduction under any provisions of Chapter VI-A, other than section 80JJAA or section 80M, in case a company opts to pay tax at concessional rate of tax under section 115BAA or 115BAB, as the case may be. Thus, no deduction shall be available under any of the provisions of Chapter VI-A as against the prohibition of deductions only contained under the heading "C. Deduction in respect of certain incomes" earlier. The benefit of deduction under section 80JJAA and 80M however, shall be available to such companies. This amendment is being made retrospectively and accordingly shall be applicable from assessment year 2020-21.

Under the proposed amendment, contributions made by such companies which opt for concessional rate of tax to trusts and charitable institutions formed for discharging corporate social responsibilities will not be eligible for deduction under 80G. Further, contributions made to scientific research association under section 80GG and contributions by companies to political parties under section 80GGB shall also not be available to such companies.

4. Withdrawal of exemptions provided to serving and retired Chairman or members of the Union Public Service Commission

Section 10(45) provides an exemption in respect of any allowance/ perquisite, notified by Central Government, paid to serving/ retired Chairman or members of Union Public Service Commission. Finance Bill, 2020 propose to withdraw such exemption by deleting said section 10(45) from the Act.

5. Taxpayer's Charter

The Finance Minister has stated in her Budget speech that the Government's desire to reassure the taxpayers that it is committed to taking measures so that the citizens are free from harassment of any kind. For such purpose, the Finance Bill, 2020 proposes to insert section 119A in the Income Tax Act to enshrine Taxpayer's Charter in the statute. Under the proposed amendment, the CBDT has been given the power to adopt and declare a Taxpayer's Charter and issue such orders, instructions, directions or guidelines to the Income Tax Authority as it may deem fit for the administration of the Charter. It may be relevant to point out that earlier also, Taxpayer's Charter were issued by the CBDT. One has to see how this new Citizen Charter which is proposed to be as part of the statute will be different and effective than the earlier Charter.

6. Stay of demand not to be granted by the ITAT unless at least 20% of the demand is paid

Under the existing provisions of the first proviso to sub-section (2A) of section 254 of the Act, ITAT is empowered to grant a stay of the recovery of demand arising pursuant to the order of the CIT(A) for a maximum period of 180 days. Under the second proviso to the said sub-section, in cases the appeal is not disposed of within the period of stay granted initially to the assessee and the delay is not attributable to the assessee, ITAT, on an application made by the assessee, can extend the period of stay of demand for a further period or periods. However, the aggregate period of stay of demand originally allowed and the period or periods so extended under the second proviso shall not exceed 365 days. The third proviso of the said sub-section provides that if the appeal is still not disposed of within the total period of stay of up to 365 days, the order of stay shall stand vacated after the expiry of said, even if the delay in disposing of the appeal is not attributable to the assessee.

Finance Bill, 2020 proposes to amend the first proviso of sub-section to provide that the ITAT may grant a stay of demand subject to the condition that the assessee shall be required to deposit not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof. Finance Bill, 2020 further proposes to substitute second proviso to provide that no extension of stay shall be granted by ITAT, where such appeal is not so disposed of within the period of stay as specified in the order of stay. However, on an application made by the assessee, a further stay can be granted, if the delay in not disposing of the

appeal is not attributable to the assessee and the assessee has deposited not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof. The total stay granted by ITAT cannot, however exceed 365 days.

Under the proposed amendment, ITAT shall not grant a stay of demand by requiring the assessee to pay an amount less than 20% of the demand amount or furnish a security of the equivalent amount. Assessee shall now be required to pay at least 20 % in order to obtain stay of demand. It is to be noted that 20% payment or furnishing of security of equivalent amount is the minimum amount that an assessee will be required to be pay. ITAT may still require the assessee to deposit a higher amount while granting a stay of demand considering the merit of the case. Further, it is to be noted that the taxpayers will not get an automatic stay only on the basis of 20% payment criteria. Other criteria's considered by the ITAT such as balance of convenience, prima facie case being good, financial hardship, etc. will be continue to be considered by the ITAT while granting the stay of demand. The imposition of the condition of minimum payment of 20% may cause genuine hardship in cases where the order passed by the lower authorities is mechanical and where the assessment made is high pitch one i.e. where assessments are made at huge multiple times of the return income. ITAT has inherent appellate powers of granting stay of demand as incidental or ancillary to its appellate jurisdiction. The proposed amendment, curtails and, in a way, interferes with the inherent appellate jurisdiction of the Tribunal to grant stay of demand even in deserving cases and puts in stringent condition of minimum payment of 20 per cent of demand.

The proposed amendment may be challenged on the ground that the considering the use of the word "may", the condition of minimum 20% payment is discretionary as against mandatory. Further, the said amendment may be challengeable on the ground that it violates Article 14 of the Indian Constitution as it intends to treat assessee's with genuine hardship and good prima facie case as against other assessee's at same footing. Further, the proposed amendment may lead to increase in the number of writ petitions being filed under Article 226 before the High Court on the issue of stay of demand. The constitutional power and right is available and has not and cannot be curtailed. The powers of the High Court under Articles 226 and 227 form a part and parcel of the basic structure of the Constitution and cannot be over written and nullified as held by the courts from time to

time. Thus, the High Court in appropriate matters may grant or extend stay even where assessee is not in a position to pay 20% of the demand.

The second proposed change which provides that the maximum period of stay shall not exceed 365 days, surprisingly, proposes to re-enact the law invalidated by the Courts. The Courts have held that well behaved assessees and those who cause delays cannot be treated as equals and thus, stay may be extended beyond 365 days as well in case the delay in disposing the appeal is not attributable to the assessee. Thus, this change undoubtedly will open up for a constitutional challenge.

This amendment will take effect from 1st April 2020 and should apply in respect of stay applications filed on or after 01.04.2020.

7. Verification/Signing of Income Tax Return and appearance of authorized representative

The Finance Bill, 2020 has proposed to amend section 140 of the Income Tax Act so as to enable the Board to prescribe such person other than the Director to sign the return on behalf of the company. Similarly, the Board is being empowered to prescribe such person other than the insolvency professional to sign the return in case of a company for which application has been admitted and in the case of LLP, such person other than the Partner of the LLP. Further, section 288(2) is being amended to enable the Board to prescribe such other person to act as an authorized representative by inserting clause (viii).

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